

PHYSICAL THERAPY BOARD OF CALIFORNIA

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2002 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Previous Sunset Review, Background Paper for the 2001 Public Hearing, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM

Brief History and Functions of the Board

The Physical Therapy Board of California (PTBC) is the state entity under the Department of Consumer Affairs (DCA) that licenses¹ and regulates physical therapists (PT), physical therapist assistants (PTA) and physical therapy aides in California.

The PTBC was established in 1953 to protect the California consumer from the incompetent, unprofessional or criminal practice of physical therapy. Since its establishment in 1953, the regulation of the profession has been changed and redefined by legislative and regulatory actions to ensure continued consumer protection while permitting the profession to respond as new and advanced technologies are developed. In carrying out its mission the PTBC does the following:

- Promotes legal and ethical standards of professional conduct,
- Investigates the background of applicants,
- Administers licensing examinations, promotes a national examination program that is reflective of the current practice of physical therapy,
- Licenses physical therapists and approves physical therapist assistants,
- Licenses foreign educated physical therapists who have education substantially equivalent to California requirements,
- Certifies physical therapists to perform electromyography,
- Investigates complaints from consumers,
- Takes disciplinary action against licensees whenever appropriate, and
- Educates consumers about patient's rights and quality of service.

Include the current composition of the Board (public vs. professional) and listing of Board Members, who appointed by, when appointed, when terms expire, and whether vacancies exist and for how long;

¹ Section 23.7 of the Business and Professions Code specifies: *Unless otherwise expressly provided, "license" means license, certificate, registration, or other means to engage in a Business or Profession regulated by this code or referred to in Section 1000 or 3600.* The Physical Therapy Practice Act (Act) generally uses the word license when referring to a physical therapist, certified when referring to a physical therapist authorized to perform electromyography and approval when referring to a physical therapist assistant. For consistency, this report generally uses the descriptive word in the act when referring to an individual classification and uses the generic word license when referring to more than one classification.

Current Composition of the Board

There are currently two vacancies on the Board, one public member and one physical therapist member. These positions have been vacant since June of 2001. Table A below illustrates the current composition of the Board.

TABLE A – BOARD MEMBER COMPOSITION

BOARD COMPOSITION			
APPOINTEE	APPOINTED BY	TERM STARTED	TERM EXPIRES
<i>Donald A. Chu, PhD, President</i> Physical Therapist	Governor	01/01/99	06/01/02
<i>Vacant</i> Physical Therapist	Governor	06/02/00	06/01/04
<i>Valerie Sinkus</i> Physical Therapist	Governor	03/10/94	06/01/01
<i>Louis Garcia</i> Public Member	Senate Rules Committee	08/27/93	06/01/03
<i>Jerry Kaufman</i> Physical Therapist	Governor	10/13/94	06/01/02
<i>Vacant</i> Public Member	Governor	06/02/00	06/01/04
<i>Mel Wilson</i> Public Member	Speaker of Assembly	5/25/01	06/01/03

Describe the Committees of the Board and their functions, providing organization chart;

Committees of the Board and Their Functions

The Board has two standing committees, Licensing and Practice Issues. The committees are usually comprised of the PTBC members. The Board has delegated to the committees the authority to make decisions on qualifications of applicants and to respond to routine scope of practice questions. Committee recommendations beyond the delegated authority of the two committees must be acted on by the full Board. On occasion, particular issues may require the use of ad-hoc committees and might include other licensees or consumer representatives. Ad-hoc committees develop recommendations on the issue assigned and bring those recommendations to the full Board for action. Exhibit A contains an organization chart which outlines the committees of the Board.

Include who the Board licenses, titles, regulates, etc. (Practice Acts vs. Title Acts);

Professions Licensed and Regulated by the Board

As permitted by the Physical Therapy Practice Act, the Board licenses, certifies, approves, and regulates the following physical therapy professionals:

- Physical Therapist (P.T.) (license) as known as in title protected by statute,
 - Registered Physical Therapist (R.P.T.) (license)
 - Licensed Physical Therapist (L.P.T.) (license)
 - Physiotherapist (license)
 - Licensed Physical Therapist Technician (license)
 - Registered Physical Therapist Technician (license)
 - Physical Therapist Technician (license)
- Physical Therapist Electroneuromyographer (certified)
- Physical Therapist Kinesiological Electromyographer (certified)
- Physical Therapist Assistant (approve)
- Physical Therapy Assistant (approve)

The PTBC does not license or approve Physical Therapy Aides, but does regulate what duties and functions may be performed under the supervision of the physical therapist.

Include any major changes to the Board since the last review (internal changes, strategic planning, regulatory changes or recent legislation, etc.);

Major Changes to the Board Since Last Sunset Review

The most significant internal change since the last sunset review was the initiation of training programs for the PTBC's investigators and consultants. The training objective was to enhance their knowledge of the legal practice of physical therapy in California, thereby improving the effectiveness of the enforcement program. Discussion of the training programs is included in the Enforcement Program Overview section of this report.

The PTBC continues to conduct an annual strategic planning session to review accomplishments of the previous year and revise the plan to reflect future goals and objectives. The strategic planning session is open to the public. All interested individuals are encouraged to participate in the strategic planning process.

Several significant legislative changes have occurred as a result of the last review. They are as follows:

- **The board member composition of the PTBC was increased from six (6) to seven (7) positions. (SB1980, Greene, Chapter 991, statutes 1998. The**

newly established position is designated as a physical therapist educator appointed by the Governor. This position was filled on January 1, 1999.

- **The PTBC prepared a report to the legislature on the necessity of certifying physical therapists to perform electromyography. This report was submitted to the legislature on October 1, 1999. Based on the information provided, the legislature (Senate Bill 1600, Chapter 427, Statutes 2000) removed the sunset provision of Business and Professions (B&P) Code 2620.5 and continued the certification of physical therapist electroneuromyographers (ENMG) and physical therapist kinesiological electromyographers (KEMG). The report is included as Exhibit B.**

Since the last sunset review, the PTBC has made a number of regulatory changes. The major changes are as follows:

- **In compliance with the prior governor's mandate to review all regulations for necessity and relevancy, the PTBC made housekeeping changes, repealing regulations and amending others to be more reflective of current practice.**
- **Adopted a regulation which provides licensed physical therapists will require physical therapy aides, applicants, students and interns performing patient related tasks under their supervision to wear name tags displaying their respective names and working titles.**
- **Modified the physical therapist assistant equivalent training or experience provisions so that effective July 1, 2001, all equivalency applicants must complete technical course work at the post-secondary level. The regulation was also revised to require all applicants to meet the general education requirement of a passing grade of at least a "C" in English Composition.**
- **Revised the PTBC's Disciplinary Guidelines in January of 1997.**
- **Amended regulations to reflect the statutory increase in initial license and biennial renewal fees in 1997 and the increase in the California Law examination fee in 2000.**
- **Proposed regulations, currently being reviewed by the Office of Administrative Law (OAL), that require all clinical service and evaluations of clinical services to be recorded on forms that are used nationally.**

Include any major studies conducted by the Board (provide copy of any documents or reports produced by or under the direction of the Board);

Major Studies Conducted by the Board

On October 1, 1999 the PTBC submitted a report to the Legislature on Electromyography performed by physical therapists. A copy of the report is included as Exhibit B.

The PTBC is currently conducting a validation study to determine if the educational curriculum requirements for foreign educated physical therapists are being met by California educational programs approved by the Board.

Additionally, the PTBC is working with the Federation of State Boards of Physical Therapy (FSBPT) to develop new application procedures that could expedite the examination process and possibly eliminate the need for temporary licensure. More information on temporary licensure can be found under the *COMITY/RECIPROCITY WITH OTHER STATES* section of this report.

Licensing data which includes information the Board provides regarding the licensee (i.e., education completed, awards, certificates, certification, specialty areas, etc).

Licensing Data

As of June 30, 2001, 16,819 physical therapists and 4,477 physical therapist assistants are licensed by the PTBC. Twenty-five (25) physical therapists are certified as electroneuromyographers (ENMG) and another thirty (30) are certified as kinesiological electromyographers KEMG). Tables B, C and D below provide licensing and certification data for the past four years.

TABLE B - LICENSING DATA FOR PHYSICAL THERAPISTS

LICENSING DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Licensed	15,358	15,858	16,296	16,819
California	12,443	13,012	13,575	14,095
Out of-State	2,785	2,721	2,588	2,594
Out-of Country	130	125	133	130
Applications Received	1,143	1,264	1,181	1,268
Applications Denied	0	1	1	1
Licenses Issued	859	970	972	966
Renewals Issued	7,069	7,274	7,458	7,864
Statement of Issues Filed	0	0	0	1
Statement of Issues Withdrawn	0	0	0	0
Note: Used ASP Report #095 and Cal Stars				

**TABLE C – CERIFICATION DATA FOR
PHYSICAL THERAPIST ELECTRONEUROMYOGRAPHERS (ENMG)
AND KINESIOLOGICAL ELECTROMYOGRAPHERS (KEMG)**

CERTIFICATION DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total ENMG Certified	32	30	29	25
California	24	21	21	18
Out-of-State	8	9	8	7
Out-of Country	0	0	0	0
Total KEMG Certified	30	30	30	30
California	28	28	28	29
Out-of-State	2	2	2	1
Out-of Country	0	0	0	0
Note: Used DCA Primary Status Summary Report				

**TABLE D – LICENSING DATA FOR
PHYSICAL THERAPIST ASSISTANTS**

OTHER LICENSEES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Licensees (by type)	3,950	4,220	4,331	4,477
California	3,519	3,777	3,905	4,052
Out-of-State	424	436	419	419
Out-of-Country	7	7	7	6
Applications Received	409	420	370	301
Applications Denied	0	1	2	3
Licenses Issued	306	363	289	300
Renewals Issued	1,908	1,780	2,029	2,007
Statement of Issues Filed	0	1	2	2
Statement of Issues Withdrawn	1	0	0	0
Note: Used ASP Report #095 and Cal Stars				

BUDGET AND STAFF

Discuss which fees are main source of revenues, when renewal is required, date of last fee(s) adjustment, and if any plans to increase fees and for what reasons. List all fees.

Current Fee Schedule and Range

The PTBC's main source of revenue is fees; fifty-one percent (51%) renewal fees, forty-three percent (43%) licensing and examination fees, and six percent (6%) from interest and other miscellaneous revenue such as the sale of the PTBC's mailing list. On May 1, 2000, the examination fees were increased to reflect a raise in the fee now charged by the provider of the examination. The license and renewal fees have not changed since 1997. The PTBC started the current fiscal year with a reserve of \$1,675,000. This represents 9.7 months of expenditures.

TABLE E – AUTHORIZED BOARD FEES

Fee Name	Source Code	Current Amount	Statutory Limit	Fee Ceiling Statutory Authority
Prior Yr Accrued Delinquent Fee	125800 4M	Various	½ of renewal fee	2688(g) B & P
Prior Yr Accrued Delinquent Fee	125800 4B	Various	½ of renewal fee	2688(g) B & P
Application Fee – PT	125700 5N	\$ 50.00	\$ 75.00	2688(a) B & P
Application Fee – PTA	125700 5P	\$ 50.00	\$ 75.00	2688(e) B & P
Application Fee – Foreign PT	125700 5Q	\$100.00	\$125.00	2688(a) B & P
Initial License PT	125700 5E	\$120.00	\$150.00	2688(c) B & P
Initial License PTA	125700 5F	\$120.00	\$150.00	2688(f) B & P
Exam Fee – PT	125700 16	\$380.00	Actual cost	2688(b) B & P
Re-Exam Fee – PT	125700 XQ	\$380.00	Actual cost	2688(b) B & P
Exam Fee – PTA	125700 17	\$365.00	Actual cost	2688(b) B & P
Re-Exam Fee – PTA	125700 Q9	\$365.00	Actual cost	2688(b) B & P
Exam Fee – PT - L & R	125700 KW	\$ 85.00	Actual cost	2688(b) B & P
Re-Exam Fee – PT - L & R	125700 KX	\$ 85.00	Actual cost	2688(b) B & P
Exam Fee – PTA - L & R	125700 KY	\$ 85.00	Actual cost	2688(b) B & P
Re-Exam Fee – PTA – L & R	125700 KZ	\$ 85.00	Actual cost	2688(b) B & P
Duplicate License/Certification	125600 4E	\$ 15.00	\$ 20.00	2688(h) B & P
Endorsement	125600 4D	\$ 30.00	\$ 30.00	2688(i) B & P
ENMG Application Fee	125700 4S	\$100.00	\$200.00	2689(a) B & P
ENMG Examination Fee	125700 4H	\$500.00	\$500.00	2689(b) B & P
KEMG Application Fee	125700 4T	\$100.00	\$200.00	2689(a) B & P
KEMG Examination Fee	125700 4R	\$500.00	\$500.00	2689(b) B & P
ENMG Renewal Fee	125800 4E	\$ 50.00	\$200.00	2689(a) B & P
ENMG Delinquent Fee	125900 4E	\$ 25.00	½ of renewal fee	2688(g) B & P
KEMG Renewal Fee	125800 4F	\$ 50.00	\$200.00	2689(a) B & P
KEMG Delinquent Fee	125900 4F	\$ 25.00	½ of renewal fee	2688(g) B & P
Biennial Renewal – PT	125800 4L	\$120.00	\$150.00	2688(d) B & P
Biennial Renewal – PTA	125800 4N	\$120.00	\$150.00	2688(f) B & P
Delinquent Fee – PT	125900 4D	\$ 60.00	½ of renewal fee	2688(g) B & P
Delinquent Fee – PTA	125900 4L	\$ 60.00	½ of renewal fee	2688(g) B & P

Provide a brief overview of revenues and expenditures;

Revenue and Expenditure History

During the last four years, the PTBC's revenue and expenditures have been stable. The slight increase in revenues is reflective of the increase in the number of applicants applying for licensure. The increase is the result of new graduates entering the profession and individuals moving into the State. The variation in expenditures is attributable largely to the roll forward

credit adjustment made in the 1999/00 fiscal year for investigative services that were over estimated during the 1997/98 fiscal year.

TABLE F – COMPARISON OF REVENUES AND EXPENDITURES

REVENUES	ACTUAL				PROJECTED	
	FY 97/98	FY 98/99	FY 99/00	FY 00/01	FY 01/02	FY 02/03
Licensing Fees	\$1,914,455	\$1,932,213	\$2,023,215	\$2,140,611	\$2,148,475	\$2,156,000
Fine & Penalties	\$2,500	\$0	\$3,200	\$0	\$5,000	\$7,500
Recovery of Investigative Cost	\$21,587	\$49,016	\$43,076	\$13,210	\$15,000	\$15,000
Other	\$26,040	\$835	\$5,230	\$4,137	\$4,000	\$4,000
Interest	\$22,870	\$22,370	\$54,560	\$102,983	\$100,000	\$100,000
TOTALS	\$1,984,952	\$2,004,434	\$2,126,081	\$2,260,941	\$2,272,475	\$2,282,500
EXPENDITURES	ACTUAL				PROJECTED	
	FY 97/98	FY 98/99	FY 99/00	FY 00/01*	FY 01/02	FY 02/03
Personnel Services	\$352,935	\$370,461	\$457,257	\$503,637	\$441,733	\$442,000
Operating Expenses	\$1,838,042	\$1,485,812	\$1,091,536	\$1,549,710	\$1,666,621	\$1,610,000
Reimbursements	\$121,299	\$127,281	119,915	\$122,726	\$99,000	\$10,000
(-) Distributed Costs	0	0	0	0	0	0
TOTALS	\$2,069,678	\$1,728,992	\$1,428,878	\$1,930,621	\$2,009,354	\$2,042,000
Note: Source: 1997/98 – 2000/01 - Month 13 CALSTARS Reports 2001/01 - Budget 2002/03 - Estimated						

Discuss the amounts and percentages of expenditures made by program components;

Expenditures by Program Component

During the last four (4) years the PTBC expended eighty-six percent (86%) of its budget on consumer protection programs. Forty-nine percent (49%) was expended investigating consumer complaints and taking disciplinary action against licensees. Thirty-six percent (36%) was spent on the examination program, an essential element of protecting the public from unqualified practitioners. Just over one percent (1%) of the budget was expended on the diversion program, which assists the PTBC in monitoring licensees who have acknowledged a history of substance abuse. The remaining fourteen percent (14%) was spent on processing initial applications for licensure and renewing existing licenses. This process not only ensures a review of applicant's criminal and prior licensure background, but also enables the PTBC to collect the fees that support the entire public protection program.

TABLE G – EXPENDITURES BY PROGRAM COMPONENT

EXPENDITURES BY PROGRAM COMPONENT	FY 97-98	FY 98-99	FY 99-00	FY 00-01	Average % Spent by Program
Enforcement	\$1,385,898	\$889,000	\$580,671	\$908,888	49.21%
Licensing	\$205,032	\$272,645	\$274,283	\$261,655	13.25%
Diversion	\$22,691	\$13,633	\$32,976	\$22,584	1.20%
Examination	\$577,356	\$680,995	\$660,861	\$860,220	36.34%
TOTALS	\$2,190,977	\$1,856,273	\$1,548,791	\$2,053,347	
Note: Based on CALSTARS Month 13 & Expenditure by Program Component Prepared by PTBC Staff					

Discuss reserve level, spending trends, and if a mandated statutory reserve level exists. Also whether deficit may occur and whether fee increase or reductions is appropriate. Compare revenues, expenditures, and reserves in the table below.

Fund Condition

The PTBC has been closely monitoring the reserve in the fund, and had planned to hold a regulatory hearing in 2001 to discuss a change in the initial licensure and application fees. These fees are currently set at \$120 for a two-year license. The PTBC postponed taking regulatory action until negotiations for changes in processing of examination fees are concluded and the development and implementation costs have been determined for the new DCA application, licensure and enforcement data base system. Once the impact of these changes is determined, the PTBC will propose a regulatory change that will result in the reserve being lowered.

TABLE H – COMPARISON OF REVENUES, EXPENDITURES AND RESERVES

ANALYSIS OF FUND CONDITION	FY 99/00	FY 00/01	FY 01/02 Current year	FY 02/03 projected	FY 03/04 projected	FY 04/05 projected
Total Reserves, July 1st	\$594,000	\$1,291,000	\$1,531,000	\$1,675,000	\$1,859,146	\$1,851,646
Total Rev. & Transfers	\$2,083,000	\$2,197,000	\$2,227,000	\$2,292,500	\$1,892,500	\$1,892,500
Total Resources	\$2,677,000	\$3,488,000	\$3,758,000	\$3,967,500	\$3,751,646	\$3,744,146
Total Expenditures	\$1,386,000	\$1,957,000	\$2,083,000	\$2,108,354	\$1,900,000	\$1,900,000
Reserve, June 30th	\$1,291,000	\$1,531,000	\$1,675,000	\$1,859,146	\$1,851,646	\$1,844,146
MONTHS IN RESERVE	11.2	9.4	9.7	8.9	9.7	9.7
Note: Source- CALSTARS & PTBC Budget						

LICENSURE REQUIREMENTS

Discuss education, experience and examination requirements for all licensure categories that the Board regulates;

Education, Experience and Examination Requirements

Educational Requirements:

Physical Therapist

Graduate of an Approved Professional Education Program: **The educational requirements consist of didactic, clinical, and research experiences in physical therapy using critical thinking and weight of evidence and include eighteen (18) weeks of full-time clinical experience with a variety of patients. Currently the student attains a bachelor's, masters or doctorate of physical therapy degree. Starting in 2002, the Commission on Accreditation of Physical Therapy Education (CAPTE) will accredit only those educational programs that grant a post-baccalaureate degree.**

Graduates Of Non-Approved Education Programs Not Located In The United States: **The education received must be determined to be equivalent educational requirements from an approved program. The education program must entitle the applicant to practice as a physical therapist in the country where the diploma was issued. In addition, after passing the National Physical Therapy Examination (NPTE), applicants must complete a period of clinical service, which does not exceed nine (9) months, under the direction and supervision of a California licensed physical therapist who is required to submit quarterly evaluations to the PTBC.**

Physical Therapist Electromyographer

The educational requirement for a physical therapist to become certified to perform electromyography is the completion of regular or extension course work pertinent to electromyography obtained in an accredited or approved public university, state college, or private postsecondary education institution which academic credit is awarded or continuing education course work acceptable to the PTBC, or documentation of the completion of a period of self-study which prepares the applicant to pass either an examination for certification as a electroneuromyographer or a kinesiological electromyographer.

Physical Therapist Assistant

Graduate of an Approved Education Program: The educational requirement is completion of the academic course work and clinical experience required by the

physical therapist assistant program to be awarded an associate degree. The curriculum consists of a combination of basic sciences, applied clinical sciences, and progressive application through clinical experience in the treatment of patients of varying ages, disabilities, and diseases and reflects education in skills and judgment required of a physical therapist assistant.

Experience

There is not an experience requirement for physical therapist and physical therapist assistant applicants who are graduates of approved educational programs. Physical therapist assistant applicants may either graduate from an approved educational program or combine work experience with post-secondary level education. Work experience must be obtained under the orders, direction and immediate supervision of (1) a California physical therapist licensed by the PTBC, (2) a physical therapist employed by the United States Government, or (3) out-of-state licensed physical therapist who has qualifications equivalent to a physical therapist licensed by the PTBC for experience obtained in another state, and is to include the treatment of patients of both sexes, varying ages and disabilities.

Examination:

PT and PTA applicants are required to pass both the NPTE and the California Law Examination. In 1997, the PTBC implemented computer based testing thereby permitting applicants for licensure to schedule both the NPTE and the California Law Examination at their convenience six days a week.

PT and PTA applicants are not required to retake the NPTE if they are approved, licensed or registered as either a PT or PTA, at the time of application, in another state, a district or territory of the United States. However, these applicants are required to successfully pass the California Law Examination before licensure or approval. They are required to provide educational and experience documentation.

PTs seeking certification to perform electromyography must pass a written examination developed by the PTBC.

Applicants may retake any of the examinations four times in twelve (12) consecutive months.

What does the Board do to verify information provided by the applicant regarding education and experience? What proof is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?

Verification of Applicant Information:

The PTBC verifies all information provided by applicants regarding their education, experience and criminal background.

Applicants who graduate from approved physical therapy educational programs must have the school verify their education on a form provided by the PTBC. The form must be signed and stamped with the school's seal. Graduates of foreign physical therapy programs must have their educational credentials evaluated by a credential evaluation service approved by the PTBC. Original transcripts must be submitted directly from the college or university providing the education. Work experience and general education requirements are validated by staff, as are examination passage scores.

All applicants must submit copies of arrest reports and court records. In addition, fingerprints are required in order for PTBC to obtain criminal history background reports from the California Department of Justice and the Federal Bureau of Investigation.

Discuss passage rates for all examinations, whether there is legitimate justification for all exams, whether exams have had an occupational analysis performed and been validated and when, and the date of the next scheduled occupational analysis for each exam.

Examination Passage Rates/Occupational Analysis:

The PTBC contracts with the Federation of State Boards of Physical Therapy (FSBPT) to conduct examinations. A criterion-referenced scoring standard developed by the Federation was adopted in November 1994. California uses a passing score of 600, and reports scores based on a scale of 200 to 800. The same pass-points are now used by all states. Consequently, an applicant for licensure from another state rarely has to retake a national examination.

The last occupational analysis conducted by the FSBPT was completed in December 1996. The study was conducted simultaneously with an analysis of practice of Canadian physiotherapists. To the PTBC's knowledge, these studies represent the first time an analysis of practice study for a profession has been conducted simultaneously by two countries to determine if the movement of professionals between countries is feasible without acquiring additional education. An update of the occupational analysis is currently in progress by the FSBPT.

Compare the exam passage rates for all candidates for both a national exam (if applicable) and/or a California state exam(s) if provided.

Examination Passage Rate Comparisons:

Applicants for licensure as a PT or approval as a PTA in California must successfully pass the appropriate NPTE. The passage rate of California candidates, in comparison with the national level, is illustrated in Table I below. In addition to the respective national examinations, California applicants for licensure must pass an examination in California law prior to licensure. Out-of state and foreign educated applicants are subject to the same examinations as California educated applicants.

Based on available NPTE information obtained from the FSBPT website, the overall average pass rate for physical therapists and physical therapist assistants during the past four years is 68%. This percentage may vary a little since data for June 2001 is not yet available. During the

period of 1997/98 through 1999/00, the pass rate was 66.3% for physical therapists and 67% for physical therapist assistant candidates. In contrast, for the same period, the NPTE average pass rate of first-time US accredited school graduates is 82% physical therapists and 75% physical therapist assistants. An average of 90% of physical therapists and physical therapist assistant candidates passed the California Law Examination during the past four years.

**TABLE I - CALIFORNIA AND NATIONAL EXAM
PASSAGE RATE COMPARISONS**

NATIONAL PHYSICAL THERAPY EXAMINATION				
YEARS	NATION-WIDE		CALIFORNIA ONLY	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
1997/98	15,316	65%	1,258	66%
1998/99	18,076	70%	1,424	71%
1999/00	19,285	62%	1,435	61%
2000/01	*14,209	*76%	1,189	70%
Note: Used data from the Federation of State Boards of Physical Therapy Pass/Fail Rates				
* Data only available through May 31, 2001 – will be revised as figures for June become available.				
CALIFORNIA LAW EXAMINATION				
	1997/98	1998/99	1999/00	2000/01
CANDIDATES	1,642	1,618	1,508	1,461
PASS %	86%	90%	91%	91%
*Note: Data calculated from individual score reports				

Discuss any increase or decrease in average time to process applications, provide exam and issue license.

Average Time to Process Applications

The PTBC does not have the advantage of the DCA Applicant Tracking System to track application process time. Therefore, in order to provide the JLCSR with an indication of the processing time, approximately two and one-half percent (2.5%) of the applications from each of the past four years were randomly sampled.

In most cases, graduates from physical therapy education programs first complete the lecture and laboratory portion of their education during the normal academic schedule and then complete the clinical experience portion. Consequently, actual graduation is not conducive to the completion of the official transcript that would normally be required for licensure. In order to expedite the licensure process, the PTBC developed, in cooperation with the educational programs, a process whereby the new graduate submits the application to the PTBC and the Registrar then submits proof of graduation once the graduate has completed the clinical portion of his or her education. In addition, applicants must first successfully pass both the NPTE and the California Law examinations prior to being licensed and they have sixty days in which to schedule and take the exams. Therefore, the PTBC may receive an application prior to the candidate fulfilling all application requirements.

During the last four years, for those individuals who pass the examination on the first attempt, the average processing time from the receipt of the application to the issuance of a license is 149 days and the average processing time from completion of all application requirements to licensure is 114 days. Table J indicates the results of the random sample and is based on the date the application was completed to licensure.

TABLE J – APPLICATION TO LICENSURE PROCESS TIME

AVERAGE NUMBER OF DAYS TO RECEIVE LICENSE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
All Sampled Applicants	138	120	153	155
Sampled Applicants Who Were Graduates of Approved Educational Programs	129	115	134	153
Sampled Applicants Who Passed Exam on First Attempt	119	91	134	112

Discuss briefly: changes made by the Board since last review to assure competency. How does the Board verify CE or other competency requirements?

Continuing Education/Competency Requirements

The practice act does not require continuing education (CE) for the renewal of a license. The Federation of State Boards of Physical Therapy is currently studying the issue of continued competency. It is anticipated the Federation will release a report in the year 2002 which will enable PTBC to study this issue to determine if legislation should be pursued to mandate continued competency. While awaiting the results of the study, the PTBC intends to pursue, as a component of continued competency, statutory authority to implement CE requirements for all its licensees. The need for CE statutory authority is discussed further as a new issue in Part 2 of the report.

Discuss briefly: temporary licensing process, or any other methods used to facilitate licensing of those from other states or foreign countries. Any anticipated changes or changes made since last review?

Comity/Reciprocity With Other States

Temporary Licensing Process (Practice by Applicants Awaiting Licensure)

California recognizes the approval of physical therapy educational programs by the Commission on Accreditation of Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA). CAPTE has approved programs in Canada, Ireland, Netherlands, Scotland and the United States. Graduates of CAPTE approved physical therapy educational programs

located in the United States, or other countries, may perform physical therapy procedures while awaiting the results of their first attempt on the NPTE. These individuals are considered Physical Therapist License Applicants (PTLA) and must practice under the supervision of a California licensed physical therapist once they are authorized to do so by PTBC. This provision applies to individuals seeking their first license.

Graduates of CAPTE approved physical therapist assistant programs in the United States may perform physical therapy procedures while awaiting the results of the first attempt on the licensure examination as Physical Therapist Assistant Licensure Applicant (PTALA) under the supervision of a California licensed physical therapist.

Graduates of physical therapy and physical therapist assistant educational programs must pass both the NPTE examinations and the California Law examination prior to obtaining licensure. First time failure of the NPTE examinations results in automatic termination of the licensure applicant status. However, failure of the California Law examination does not affect license applicant status. It simply delays licensure.

Individuals who are graduates of approved educational programs and have been licensed as physical therapists or physical therapist assistants in other states may also work as license applicants under the supervision of California licensed physical therapists while they await Board approval of their license. These individuals must also successfully pass the California Law examination prior to becoming licensed.

Individuals applying to become physical therapists who have graduated from non-approved programs outside of the United States must first pass the NPTE before they are eligible to perform physical therapy as license applicants. Once they have pass the NPTE, they must complete a period of clinical practice, not to exceed nine months, under the supervision of a California licensed physical therapist prior to being eligible for licensure unless they have been licensed in another state and practicing for at least nine months. These individuals must also successfully pass the California Law examination prior to licensure.

The Board is currently working with the Federation of State Boards of Physical Therapy on the development of new application procedures that could expedite the examination process and ultimately eliminate the need for temporary licensure.

ENFORCEMENT ACTIVITY

TABLE K – ENFORCEMENT PROGRAM ACTIVITY

ENFORCEMENT DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Inquiries	*	*	*	*
Complaints Received (Source)	222	234	245	219
Public	52	85	64	53
Licensee/Professional Group	129	127	144	136
Governmental Agencies	2	4	7	7
Other	39	18	30	23
Complaints Filed (By Type)	207	237	245	219
Competence/Negligence	19	24	26	15
Unprofessional Conduct	17	17	14	12
Fraud	11	13	25	22
Health and Safety	0	3	1	2
Unlicensed Activity	62	47	66	65
Personal Conduct	98	133	113	103

Complaints Closed	169	224	243	200
Investigations Commenced	45	71	66	81
Compliance Actions **	3	2	5	5
ISOs & TROs Issued	1	1	2	0
Citations and Fines	2	0	5	0
Public Letter of Reprimand	1	2	0	2
Cease & Desist/Warning	0	0	0	0
Referred for Diversion	0	0	0	0
Compel Examination	0	0	0	0
Referred for Criminal Action	7	4	4	10
Referred to AG's Office ***	24	27	27	31
Accusations Filed	10	15	15	16
Accusations Withdrawn	3	0	0	1
Accusations Dismissed	0	1	0	0
Stipulated Settlements	1	6	3	9
Disciplinary Actions	5	10	13	14
Revocation	4	4	8	3
Voluntary Surrender	0	2	0	1
Suspension Only	0	0	0	0
Probation with Suspension	0	2	3	4
Probation	0	2	1	3
Probationary License Issued	1	0	1	3
Probation Violations****	1	0	2	5
Suspension or Probation	1	0	1	0
Revocation or Surrender	0	0	1	1
Notes – Used ASP Reports #095, 096 and 097 *The PTBC does not track inquiries. **Numbers differ because this table does not include all categories ***Total number of cases submitted to AG – Action not always taken in year referred. ****Probation Violations - Resolution of case is shown in year accusation filed, not necessarily in the year decision occurred. Four cases filed in 2000/01 are still pending resolution.				

Discuss statistics in enforcement data. What is the source of most of the complaints? Are there some unique reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or civil courts to report any judgments taken against the licensee. Any current problems with board's receiving relevant complaint information or obtaining information for investigation purposes? What are the largest number and type of complaints filed (incompetence, unprofessional conduct, etc.)? Explain which type of cases are being stipulated for settlement. Any significant changes since last review (increases or decreases)?

Enforcement Program Overview

The PTBC receives complaints from a variety of sources. Over the last four years, forty-two percent (42%) of the complaints received by the PTBC were filed by the public, insurance companies paying for care received by the public and governmental agencies with a consumer protection mandate. The physical therapy profession filed the remaining complaints, fifty-eight percent (58%). Although the PTBC has not tracked the actual percentage, many of

the complaints filed by the profession were filed on behalf of patients who were concerned the treatment they received previously may have been inappropriate.

Although the PTBC does not have unique reporting requirements, it has not experienced any problems obtaining information regarding its licensees from the following sources:

- The Department of Justice (DOJ) automatically reports licensee criminal activity pursuant to Penal Code Section 11105.2. DOJ not only notifies the PTBC of the identity of the convicted licensee, it also provides specific information concerning the conviction.**
- The Federation's National Data Bank provides notice regarding disciplinary actions taken against licensees in other states.**
- The Department's Family Support unit works with the Department of Social Services to identify licensees who fail to comply with child support obligations.**

The PTBC does not have statutory authority to require reports from health plans or health care facilities. Licensees are not required to report unprofessional conduct or other violations of the Physical Therapy Practice Act committed by their peers to the PTBC. Hospitals, where many PTs and PTAs practice, measured competency through documentation of patient care and peer utilization review boards. However, the hospitals are not required to report to the PTBC.

The most common complaints filed are incompetent care, unlicensed practice, aiding and abetting unlicensed activity, improper supervision of physical therapist assistants and physical therapy aides, and personal conduct.

Personal conduct cases include criminal convictions, discipline by other states, sexual misconduct, and substance and/or drug related complaints. During the past four fiscal years, forty-nine percent (49%) of the complaints involved personal conduct.

Sexual misconduct cases take priority and are submitted to the department's Division of Investigation (DOI) with a request to expedite the investigation. Discipline taken from other State Boards and criminal history are usually handled in-house by the PTBC Consumer Protection Services' Analyst and

then forwarded to the Office of the Attorney General (AG) for filing if warranted.

Unlicensed activity and aiding and abetting are two separate violations; however, are tracked under the same category of “Unlicensed Activity”. In the last four fiscal years, twenty-six percent (26%) of the complaints were for unlicensed activity. Unlicensed activity includes practice by persons who have never been licensed to practice physical therapy in California, or a licensee allowing a license to expire into delinquent status and providing services with a delinquent license. It could also involve unlicensed physical therapy aides performing patient-related tasks in an unsupervised capacity. Complaints alleging unlicensed activity are forwarded to DOI for investigation. Cases filed with DOI for unlicensed activity consist of individuals altering a license and/or providing potential employers with a false license number.

The type of complaint that is filed against the licensee has no bearing on whether the resulting disciplinary case is stipulated for settlement. In fact, pre-hearing settlement conferences before an Administrative Law Judge (ALJ) are now required as part of the Administrative Procedures Act (APA). The cost of prosecuting a case during an administrative hearing and the uncertain outcome of prosecuted cases causes the pre-hearing settlements to become an attractive option for the PBTC and its accused licensees. In its goal to achieve reasonable pre-hearing settlement terms in disciplinary cases, the PTBC seeks to achieve the outcome that would have been reached had the case been considered by an ALJ.

The PTBC has initiated training courses for both its subject matter experts (SME) and investigators with the DOI. The training course for the investigators was a comprehensive two-day course developed in cooperation with DOI. This was the first time a training course of this magnitude has been provided to DOI investigators. The training for the SMEs is one day in length. The initial sessions were intended to train DOI investigators and the PTBC’s current SMEs and to become a recruitment tool for additional SMEs. The PTBC intends to continue offering the training to SMEs at least once each year for recruitment and orientation purposes. The PTBC anticipates the training will increase the efficiency and effectiveness of both the investigators and SMEs and result in better presentations of cases at the administrative hearings.

Discuss what percentages of complaints are referred for investigation, then to accusation, and end up having some disciplinary action taken. What overall statistics show as to increases or decreases in disciplinary action since last review.

Complaint Disposition Percentages

There has been a significant increase (80%) in the past four years of cases being referred to DOI for investigations. The number of accusations filed has increased by sixty percent (60%) and ensuing discipline has increased by one hundred and eighty percent (180%).

TABLE L – COMPLAINT DISPOSITION

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaints Received	222	234	245	219
Complaints Closed	169	224	243	200
Referred for Investigation	45	71	66	81
Accusation Filed	10	15	15	16
Disciplinary Action	5	12	13	15
Note: Used DCA ASP Report #091 and 096				

Discuss time frames for processing complaints, investigation of cases, from completed investigation to formal charges being filed, and from filing of the accusation to final disposition of the case. Discuss if any changes from last review.

Case Aging Data

The PTBC sets limits on the number of hours DOI may spend on any investigation. Generally, the limit is in the range of eight to twenty hours and is based on the PTBC's knowledge of the tasks required and any travel time involved. Additional hours may be approved after a case is initiated, but only after discussions between DOI and the PTBC's enforcement analyst and/or the executive officer. The time frames to process a typical board case are as follows:

- Complaint received, assessed and assigned 10 days
- Case investigated and report prepared 1 – 14 months
- Administrative Review, hearing, decision and processing 1 – 12 months

The time from the receipt of a complaint to an AG referral is typically nine to fourteen months.

TABLE M – AVERAGE TIME TO PROCESS BOARD CASES

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSCUTE CASES				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaint Processing	160	148	214	143
Investigations	369	338	284	345
Pre-Accusations*	176	226	254	353
Post-Accusations**	183	337	249	161
TOTAL AVERAGE DAYS***	801	809	798	815
Note: Used DCA Reports #B99, D57 and D70 * From completed investigation to formal charges being filed. ** From formal charges filed to conclusion of disciplinary case. *** From date complaint received to date of final disposition of disciplinary case.				

Discuss time frames for closing of investigations and AG cases over past four years, and average percentage of cases taking over 2 to 4+ years, and decreases or increases in the percentage of cases being closed each year. Discuss any changes from last review.

Time Frames

The majority of cases are taking two years to be investigated and adjudicated. Delays are often within DOI and the AG, and therefore, outside of the control of the PTBC. Delays can be caused by the complexity of the case, staffing issues or, in the case of the AG's office and the Office of Administrative Hearings (OAH), caseload and scheduling. The PTBC makes a conscience effort to establish timelines consistent with its Strategic Plan for those agencies it is dependent upon to carry out its mandate of consumer protection. However, these agencies must prioritize cases from other boards as well as those from the PTBC. This has resulted in delays in cases that are not consistent with the PTBC's Strategic Plan.

TABLE N – TIME FRAMES FOR CLOSING INVESTIGATIONS

INVESTIGATIONS CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
90 Days	10	4	1	9	11%
180 Days	4	5	15	5	13%
1 Year	10	17	14	19	27%
2 Years	13	17	18	19	31%
3 Years	4	5	6	8	11%
Over 3 Years	8	4	1	3	7%
Total Cases Closed	49	52	55	63	
Note: Used DCA Report #D44					
AG CASES CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED

1 Year	7	10	8	10	35%
2 Years	12	8	9	16	46%
3 Years	3	2	5	3	13%
4 Years	0	2	0	2	4%
Over 4 Years	0	1	1	0	2%
Total Cases Closed	22	23	23	31	
Note: Used DCA Report #D42					
Disciplinary Cases Pending	33	37	41	45	

Discuss the extent to which the board has used cite and fine authority. Discuss any changes from last review and last time regulations were updated

Cite And Fine Program

The PTBC has an administrative citation program which authorizes it to issue citations to physical therapists, physical therapist assistants and unlicensed persons. Currently, fines range from \$100 to \$2,500. The specific fine per violation is set by the executive officer. Fines are not capped to prevent multiple violations from exceeding a dollar threshold.

To date, the PTBC has issued a limited number of citations. The PTBC has found that cases, once investigated, either warranted formal disciplinary action, or the violation was not included in the citation authority. One of the PTBC's licensees requested a hearing before an ALJ because there is no set time frame for how long a citation remains public. Based on this request, the PTBC, is currently seeking to amend its administrative citation regulation to specify citations are public for five (5) years from the date of issuance. The PTBC is also seeking to add additional violations to the citation regulation that PTBC has determined are less egregious and not necessarily cause for discipline.

TABLE O – CITE AND FINE PROGRAM STATISTICS

CITATIONS AND FINES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Citations	1	0	7	4
Total Citations With Fines	1	0	5	3
Amount Assessed	\$2,500	0	\$3,200	\$4,000
Reduced, Withdrawn, Dismissed	0	0	1	2
AMOUNT COLLECTED	\$2,500	0	\$3,200	0
Note: Used Report B58 (CAS)				

Discuss the board's diversion program, the extent to which it is used, the outcomes of those who participate, the overall costs of the program compared with its successes.

Diversion Program

The PTBC is authorized to administer a diversion program. The PTBC does not provide rehabilitative services. It only provides assistance in obtaining such services and in monitoring licensees who are in such programs to ensure they do not present a threat to the public.

The PTBC continues to contract with a private provider, Managed Health Net Services, (formerly known as Occupational Health Services) to provide confidential intervention, assessment, referral, and monitoring services for the rehabilitation of physical therapists and physical therapist assistants who are impaired due to dependency on alcohol or other chemical substances.

There has been no significant change in the program since the last sunset review other than more licensees are now utilizing the services offered.

TABLE P – DIVERSION PROGRAM STATISTICS

PROGRAM STATISTICS	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Program Cost	\$22,691	\$13,633	\$32,976	\$22,584
Total Participants	1	1	3	4
Successful Completions	1	0	0	1
Unsuccessful Completions	0	0	0	0

Discuss the results of the Survey.

Results of Complainant Satisfaction Survey

The PTBC sent surveys to every consumer who filed a complaint with the board during the past four years, totaling 211. The PTBC did not send surveys to institutions and sister agencies because the PTBC felt the consumer's personal involvement perspective was more critical.

Forty-eight (48) surveys were returned undelivered. Forty (40) responses were received, representing twenty-five percent (25%) of those reaching the consumer. The number of responses received for each year is indicated in Table Q – Consumer Satisfaction Survey under the calendar year. In 1998 and 2000, several surveys were received that did not answer all the questions. The percentages for these years are based on the actual number of consumers responding to each specific question.

The results of the survey indicate the PTBC is steadily improving its consumer services. However, during staff review of the surveys, many comments indicating consumer dissatisfaction with some of the services provided by PTBC were noticed. Consequently, staff reviewed the complaint files of consumers providing negative responses to the survey. The review indicated:

- Market-place issues beyond the authority of the PTBC,
- Patient record access beyond the authority of the PTBC,

- Misunderstanding as to why complaints did not constitute violations of the Practice Act, and
- One complainant did not receive a closing letter from the PTBC.

To address the concerns expressed by the consumer in the survey, the PTBC developed a more comprehensive case closure letter explaining the Practice Act and the types of complaints the board may address. In addition, in keeping with its consumer outreach plans, the PTBC developed several consumer brochures that provide a broad overview of the Practice Act, PTBC's authority limitations, and suggestions of other consumer service avenues. Relevant brochures are now accompanying complaint forms and are included with the case closure letters. Samples of the brochures are included as Exhibits C through F. The consumer satisfaction survey also accompanies each closure letter and the brochure information is now included on the website. PTBC is pursuing enhancement of its patient record authority, and sent a closing letter, along with an apology, to the consumer who did not receive notification of case closure.

TABLE Q – CONSUMER SATISFACTION SURVEY

CONSUMER SATISFACTION SURVEY RESULTS					
QUESTIONS		Percent Satisfied by Calendar Year			
No. Surveys Mailed:	211				
No. Surveys Returned:	40	1997	1998	1999	2000
No. Surveys Returned Undelivered:	48	(10)	(12)	(6)	(12)
1. Were you satisfied with knowing where to file a complaint and whom to contact?		60%	67%	83%	91%
2. When you initially contacted the board, were you satisfied with the way you were treated and how your complaint was handled?		50%	45%	67%	82%
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the board would take?		10%	45%	67%	73%
4. Were you satisfied with the way the board kept you informed about the status of your complaint?		0%	27%	33%	73%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?		10%	27%	17%	67%
6. Were you satisfied with the final outcome of your case?		0%	18%	17%	42%
7. Were you satisfied with the overall service provided by the board?		10%	27%	33%	42%
5-point grading scale (i.e. 5,4,3, = satisfied to 1,2 = dissatisfied)					

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Discuss the average costs incurred by the board for the investigation and prosecution of cases, and which type of cases average more than others. Explain if the board is having any difficulty in budgeting for Prosecution and Hearing costs, and whether cases may have been delayed because of cost overruns.

Average Costs For Disciplinary Cases

The PTBC is limited in its ability to closely track the costs of disciplinary cases due to delays in receiving expenditure reports from DOI and the AG. Some cases have also been delayed at the AG's toward the end of fiscal years due to budgetary constraints. Consequently, the PTBC, in Part 2 of this report (New Issue #5), is seeking the assistance of the JLSRC to establish a funding program for AG and OAH costs utilizing the methodology currently used by the DOI.

Table R includes the actual expenditures for each fiscal year, however the average costs per case is based on the number of cases which were investigated or prosecuted regardless of whether the case was completed. Therefore, the average costs should be considered only an estimate.

TABLE R – CASE INVESTIGATION AND PROSECUTION COSTS

AVERAGE COST PER CASE INVESTIGATED	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
<u>Cost of Investigation & Experts</u>	\$266,167	\$262,300	\$304,073	\$348,654
Number of Cases Investigated	78	108	107	126
Average Cost Per Case	\$3,412	\$2,429	\$2,842	\$2,767
Number of Cases Closed	49	52	55	63
AVERAGE COST PER CASE REFERRED TO AG	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
<u>Cost of Prosecution & Hearing</u>	\$192,987	\$103,150	\$159,681	\$186,482
Average Cost Per Case	\$8,041	\$3,820	\$5,914	\$7,172
Number of Cases Referred	24	27	27	26
AVERAGE COST PER DISCIPLINARY CASE	\$11,453	\$6,249	\$8,756	\$9,939
Note: The number of cases "Referred to AG's" will not reflect the number of cases actually filed. Investigative Costs Based on Actual Hours Not Roll Forward Budget Used DCA ASP Report #091 and DCA Report #055				

Discuss the board's efforts in obtaining cost recovery. Discuss any changes from the last review.

Cost Recovery Efforts

The PTBC is authorized to request its licensees, who are disciplined through the administrative process, to reimburse the PTBC for its costs of investigating and prosecuting the cases. The PTBC's request is made to the ALJ who presides over the hearing. The ALJ may award full or partial cost recovery or to decline the PTBC's request for recovery.

The PTBC has limited resources to collect ordered cost recovery when a license is revoked or the licensee chooses to change professions or leave California. One option the PTBC is exploring is whether or not the authority exists to utilize the Franchise Tax Board to assist in the collection. It appears that specific statutory authority may be required.

TABLE S – COST RECOVERY EFFORTS

COST RECOVERY DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Enforcement Expenditures	\$1,023,117	\$523,908	\$185,038	\$246,597
#Potential Cases for Recovery*	12	16	17	19
#Cases Recovery Ordered	5	6	8	3
Amount Cost Recovery Ordered	\$27,991	\$41,017	\$22,767	\$12,932
Amount Collected	\$26,380	\$37,658	\$24,987	\$10,396
<p>*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.</p> <p>Data Sources Used:</p> <ul style="list-style-type: none"> ▪ Total Enforcement Expenditures – CALSTARS ▪ Potential Cases for Recovery- CAS ▪ Cases Recovery Ordered, Amount of Cost Recovery Ordered & Amount Collected – Tracked by PTBC Staff 				

RESTITUTION PROVIDED TO CONSUMER

Discuss the board's efforts in obtaining restitution for the individual complainant, and whether they have any formal restitution program and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Discuss any changes from last review.

The PBTC does not have statutory authority to mandate restitution to the consumer or to mediate monetary disputes.

COMPLAINT DISCLOSURE POLICY

Briefly describe the board's complaint disclosure policy. At what point in the disciplinary process is information made available to the public concerning the licensee and what type of information is made available? Does the Board have problems obtaining particular types of information?

The PTBC follows the same complaint disclosure policy as does the DCA and other health care boards. Disciplinary information is disclosed to the public once formal action has been taken; an Accusation, Statement of Issues, Interim Suspension Order or Temporary Restraining Order, has been filed, or a Letter of Reprimand has been issued. Citations and Fines are made public once they have been issued. Complaints that are in the review and investigative stages are not available to the public.

Although prior disciplinary action remains on the licensure record indefinitely, PTBC is proposing a regulation that would remove Cite and Fine information from the licensing file after five years. The DCA is in the process of updating its complaint disclosure policy and will be holding public hearings on this matter in both Northern and Southern California. The PTBC anticipates it will adopt the same policy once it has been finalized.

In an effort to alert and protect physical therapy consumers, the PTBC issues news releases regarding egregious violations of the Physical Therapy Practice Act once disciplinary actions are final and, in some cases, after an accusation has been filed. The PTBC continues to publish a monthly listing of disciplinary actions in the Medical Board of California's monthly Hot Sheet. The PTBC provides disciplinary information to the Federation's National Database for Physical Therapists and Physical Therapist Assistants and to the National Practitioners' Database. The PTBC also notifies other states of any disciplinary actions taken against licensees if the PTBC is aware that these individuals are licensed or applying for licensure in other states.

TABLE T – COMPLAINT DISCLOSURE POLICY

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		✓
Citation	✓	
Fine	✓	
Letter of Reprimand	✓	
Pending Investigation		✓
Investigation Completed		✓
Arbitration Decision	N/A	
Referred to AG: Pre-Accusation		✓
Referred to AG: Post-Accusation	✓	
Settlement Decision	✓	
Disciplinary Action Taken	✓	
Civil Judgment	N/A	

Malpractice Decision	N/A	
Criminal Violation: Felony Misdemeanor		✓

CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

Discuss what methods are used by the Board to provide consumer outreach and education.

The PTBC provides consumer outreach and education through various means. Disciplinary actions taken are published on a monthly basis in the Medical Board's Hot Sheet. The PTBC has developed four brochures addressing consumer concerns. They are entitled *How Complaints Are Handled* (Exhibit C), *The Physical Therapy Laws and Regulations as They Relate to Patient Records* (Exhibit D), *Services Available to the Consumer from the PTBC* (Exhibit E), and *Physical Therapy Never Includes Sex* (Exhibit F). Additionally, the PTBC has participated in some of the DCA's Consumer Information Fairs. The PTBC is also now providing each complainant with a copy of the Consumer Survey in an effort to ascertain how better to provide services to the consumer.

Discuss whether the Board offers online information to consumers about the activities of the Board, where and how to file complaints, and information about licensees, or believes it is feasible/appropriate to do so.

The PTBC offers a number of online services to the consumer as well as to its clients. Consumers can access information about the PTBC, its laws and regulations governing physical therapy, board meeting schedules and agendas, staff e-mail links, the information contained in the four above mentioned brochures and obtain complaint forms. In fact, the PTBC installed a second website link in response to reports that some consumers were confused by the existing address. Currently, the PTBC website can be accessed by either address - ptb.ca.gov or ptbc.ca.gov.

Discuss whether the Board conducts online business with consumers/licensees, or believes it is feasible/appropriate to do so.

Other than providing information, the PTBC is not yet conducting online business with consumers and licensees. However, the PTBC believes conducting online business can expedite processes and minimize costs to both the consumer and the licensee. Conducting PTBC online business would be feasible in a number of ways, including consumers filing complaints, applicants filing applications, and licensees renewing licenses and certificates. The PTBC is most anxious to become a part of the e-government project.

Discuss whether the Board offers online license information and applications (initial and renewal licenses, address changes, etc.), or believes it is feasible/appropriate to do so.

The PTBC is in the process of implementing online licensure verification. The PTBC has currently made available on its website the licensure application, complaint, name and address and other forms. The PTBC believes that it is feasible to file these forms online, however, issues related to ensuring authenticity of the documents must first be resolved. In addition, the current efforts have strained the limited budgetary authority of the PTBC. Further progress on making additional services available to the consumer and licensees will require additional expenditure authority. This item will be discussed further under the new issue section of Part 2.

Discuss whether the board offers online testing/examination services for both initial and renewal licenses, or believes it is feasible/appropriate to do so.

The examination and renewal is currently not online. Although the California Law Examination is available to applicants for licensure through the Sylvan Prometric, placing the examination on the Internet would facilitate immediate access. The NPTE is available nation-wide six days per week at Sylvan Prometric sites. The PTBC is currently negotiating to make the application process for the NPTE available online. The Federation believes that security concerns would prevent offering the exam online. The PTBC is working with DCA to make the law exam available online.

What streamlining of administrative functions would be necessary if the above services and information was provided via the Internet?

The e-government project will determine what infra-structure will be needed in order for California to conduct business on the Internet. The PTBC is awaiting recommendations and hopes the project will soon make tools, such as master service agreements, available.

Please describe if there are other ways use of the Internet by the Board could improve services to consumers/licensees.

The PTBC is committed to enhancing the services to consumers and licensees by use of the Internet. The projects to enable online application and examination registration, online renewal and adding information to the PTBC's home page will stretch the Board's current budgetary authority. When these projects are accomplished, or additional resources are obtained, the PTBC will continue to explore other enhancements such as making brochures available online and developing electronic communications with licensees.

Discuss what types of practices are increasingly occurring outside California's traditional "marketplaces" that fall under the jurisdiction of your Board.

It has recently come to the attention of the PTBC that many physical therapists are making physical therapy instructions available to their patients on the Internet. The PTBC foresees several problems that could occur. Since the downloading is done on a national

basis, the PTBC has no jurisdiction outside California should a consumer experience harm by following the instructions of a physical therapist in another state.

Discuss what type of challenges the Board faces with respect to online advice “practice without presence”, privacy, targeted marketing, and other issues.

Unlicensed individuals may attempt to practice illegally using the anonymous nature of the Internet to evade action by the Board. Further, the use of tele-medical instructions may be used as a general advertisement resource for the solicitation of patients. Again, the PTBC would have no jurisdiction should such advertisements violate California’s advertising laws.

Discuss whether the board has any plans to regulate Internet business practices or believes there is a need to do so.

The PTBC has minimal authority to regulate services offered or provided on the Internet. To the extent that Internet business is conducted between California physical therapists and California consumers the PTBC would investigate complaints.

PART 2.

BOARD'S RESPONSE TO ISSUES IDENTIFIED AND FORMER RECOMMENDATIONS MADE BY THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

Describe issue as stated by the Joint Committee during prior review, or new issue as identified by the Board or Joint Committee. Include some background information concerning the issue as it pertains to the Board; short discussion of recommendation if made by the Joint Committee during its last review of the Board; what action the Board took pursuant to the recommendation or findings made by the Joint Committee; any recommendation(s) the Board would have for still dealing with the issue; and If new issue not previously addressed Joint Committee, provide short discussion of issue, recommendation or action which could be taken by the Board, Joint Committee, Department of Consumer Affairs, or Legislature to deal with the issue.

PRIOR ISSUES

The Joint Legislative Sunset Review Committee (JLSRC) identified ten issues in the PTBC's last sunset review in its final findings and recommendations. The following is a brief background of each issue, the JLSRC's recommendation, the PTBC's actions and, if relevant, the PTBC's recommendation for still dealing with the issue.

ISSUE #1: *Should the licensing of physical therapists be continued?*

Both the Department and the Committee staff recommended that the State continue to license physical therapists. The recommendation was based on the State's need to regulate the physical therapy profession to protect the public from incompetent, untrained and unknowledgeable practitioners, and from practitioners with criminal backgrounds that could pose a threat to patients. Further, all fifty states license, and no states have deregulated, physical therapists. The PTBC concurred with this recommendation. The JLSRC passed the recommendation by a vote of 6-0.

The PTBC recommends licensure of physical therapists continued.

ISSUE #2: *Should the approval (licensing) of physical therapist assistants be continued?*

The Department did not address this issue. Committee staff recommended the continued regulation of physical therapist assistants by the Physical Therapy Board. The recommendation was based on forty states regulate physical therapist assistants – half through licensure and half certification. A physical therapist assistant, under the supervision of a physical therapist, may

assist in the treatment of patients. Most physical therapist assistants must be a graduate of an accredited post-secondary institution (associate degree) and have completed academic and clinical experience requirements and passed both the National Physical Therapist Assistant Examination and the California Law Examination. The PTBC concurred with Committee staff recommendations because of the importance of ensuring entry-level knowledge and compliance with supervision requirements. The JLSRC passed the recommendation by a vote of 6-0.

The PTBC recommends licensure of physical therapist assistants continue.

ISSUE #3: *Should the Board (PTBC) continue to certify physical therapists to perform electromyography?*

The Department did not address this issue. Committee staff recommended that the Physical Therapy Board evaluate the feasibility of returning that function to the professional association. A sunset date of two years should be placed on certification program for electromyography. This recommendation was made based on PTBC's indication that the professional association offers an examination for certification in electrophysiology, and the PTBC was considering whether certification by the association would provide for the same level of public protection as certification by the Board. The PTBC had identified this area for study and felt there may be a problem because the association issued a single certification while California issued two – ENMG and KEMG. The JLSRC adopted the recommendation of Committee staff by a vote of 6-0.

On October 1, 1999, PTBC submitted a report to the legislature on the necessity of certifying physical therapists to perform electromyography. This report is included as Exhibit B. Based on the information provided, the legislature (Senate Bill 1600, chapter 427, statutes 2000) removed the sunset provision of Business and Professions (B&P) Code 2620.5 and continued the certification of physical therapist electroneuromyographers (EMG) and physical therapist kinesiological electromyographers (KEMG).

The PTBC believes this issue has been resolved.

ISSUE #4: *Should other licensed health care practitioners, who perform physical therapy under their scope of practice, be permitted to supervise physical therapy assistants to assist in performing physical therapy?*

The Department did not address this issue. Committee staff recommended any proposal for other health care practitioners to supervise physical therapy assistants be required to go through a “sunrise” process, similar to that of sunset review, required under Section 9148 et seq. of the

Government Code, and by the rules of the Senate Business and Professions Committee. The JLSRC concurred with the recommendation by a vote of 6-0. The PTBC stated it does not have authority to authorize other licensed health care practitioners to supervise physical therapist assistants via a regulatory revision, it would require a statutory change. Further, the PTBC's regulations that require the physical therapist to be actively involved in the services provided by the assistant. PTBC recommended that should the legislature grant authority to other health care practitioners to supervise physical therapy assistants, the supervision level should be required at the same level as the PTBC's supervision regulation.

The PTBC believes the sunrise process continues to be an appropriate avenue.

ISSUE #5: Should legislation be sought, as recommended by the Board (PTBC), that would require all health care providers to post in their offices a notice on how and where to file complaints?

The Department did not address this issue. Committee staff concurred with the PTBC's recommendation to require licensed physical therapists to display their licenses or registrations in the locality they are working with patients, and to notify them who they can contact if they have any questions of complaints regarding the licensee. The JLSRC adopted the recommendation of the Board and the Committee staff by a vote of 6-0. Legislation was passed to require posting of licenses. PTBC pursued regulations to extend this require to the wearing of name badges.

While legislation has not resulted in a requirement of where to file a complaint, the PTBC supports such a provision.

ISSUE #6: Should sections 2662-2669 of the Business and Professions Code, which requires the Physical Therapy Board to provide a diversion program, be sunsetted?

The Department recommended that the Physical Therapy Board, the Medical Board, the Department, other boards with diversion programs, and the Legislature research an appropriate approach to privatizing diversion programs with special attention to the existing participants. Committee staff concurred with the recommendation and recommends that the Medical Board, in conjunction with other boards providing diversion programs, report to the JLSRC by September 1, 1999, on a plan to privatize diversion programs. The JLSRC did not adopt the recommendation of the Department and Committee staff by a vote of 3-3. The PTBC does not provide rehabilitative services. It only provides assistance in obtaining such services and in monitoring licensees who are in such programs to ensure they do not present a threat to the public.

The PTBC's diversion program continues to be administered by a private organization, Managed Health Net Services (MHNS), formerly known as Occupational Health Services, Inc. (OHS).

ISSUE #7: Should the licensing law be amended to require licensees to report criminal convictions to the Board (PTBC) upon license renewal?

The Department did not address this issue. Committee staff recommended that the PTBC require licensees to report criminal convictions to the Board when they renew their license. This recommendation was based on the legislature granting such authority to other health care boards for the enhancement of their enforcement program. The JLSRC adopted the recommendation of the Committee by a vote of 6-0.

The PTBC concurred with the recommendation and is now seeking the assistance of the JLSRC in its effort to gain statutory authority to require licensees to disclose misdemeanors and criminal convictions when renewing their licenses.

ISSUE #8: Should the Board (PTBC) implement an electronic tracking system to obtain timely, accurate and complete licensing application data?

The Department did not address this issue. Committee staff recommended that the PTBC should, with due regard to budgetary constraints, move toward implementing an electronic tracking system to obtain timely, accurate and complete licensing application data as long as the PTBC complies with all mandated requirements to implement any new technology project. This recommendation was based on the Committee's support of application technology that improves the efficiency and effectiveness of any board. The JLSRC adopted the recommendation by a vote of 6-0.

The PTBC concurred with this recommendation and its Executive Officer is currently serving on the DCA's Executive Steering Committee to develop and implement a better database.

ISSUE #9: Should the Physical Therapy Board be continued, or should its operations and functions be assumed by the Department of Consumer Affairs?

Both the Department and the Committee staff recommended that the Physical Therapy Board continue as the agency responsible for the regulation of the practice of physical therapists. Committee staff recommended that the sunset date of the Board be extended until July 1, 2003. The JLSRC adopted the recommendation by a vote of 6-0. The PTBC concurred.

The PTBC supports the recommendation that the Board continues as the responsible agency for regulating the practice of physical therapy.

ISSUE #10: Should the composition of the Physical Therapy Board be changed to increase public representation and create a public majority board?

Both the Department and Committee staff recommended an increase in the public membership to improve balance consistent with the Department's guidelines of a public majority. The composition of the Board would increase to 7 members, 4 public and 3 licensed physical therapists. The JLSRC did not adopt the recommendation of the Department and Committee staff. Rather the JLSRC

adopted a substitute recommendation by a vote of 5-1, to change the composition of the Board to 7 members – 4 licensed physical therapists, one (1) of whom must be involved in the education of physical therapists, and 3 public members. As a result, the board member composition of the PTBC was increased from six (6) to seven (7) positions by SB 1980, Greene, Chapter 991, Statutes 1998. The newly established position is designated as a physical therapist educator appointed by the Governor. This position was filled on January 1, 1999.

NEW ISSUES FACING THE PTBC

ISSUE #1: *Should the PTBC seek enhancement of its public protection authority?*

The PTBC has identified four (4) areas where there is a need to increase its statutory authority for purposes of public protection. The areas are, (1) include PTs and PTAs in the mandated reporting of civil law suits and peer review (commonly referred to as Section 805 reporting), (2) require PTs to document all treatment in a patient record, (3) require PTs to provide complete information to the patient regarding their treatment and care, and (4) modify Business and Profession (B&P) Code Section 2660 to redefine specifying causes for discipline as unprofessional conduct, and include the PTA in those sections that limits the violation to only the PT, thereby preventing the PTBC from taking disciplinary action against a physical therapist assistant who violates the Act.

1. Section 805 Reporting - B&P Code Sections 800 through 809 require civil settlements related to the practice of most health care professions, and actions taken by peer review bodies, be reported to the appropriate licensing board. Licensees of the PTBC are not included in B&P Section 800, and are therefore exempt from these reporting requirements. As PTs and PTAs are subject to civil litigation and peer review when consumers choose to address their concerns to the courts or to the internal processes of health care facilities, the 805 reporting requirements should apply to PTs and PTAs as well.
2. Documentation of Treatment Records - B&P Code Section 2620.7 requires a PT to document his or her patient evaluation, goals, treatment plan, and treatment summary in the patient's record. The statute does not require the PT to document any of the care actually provided or to legibly sign the patient record. This statute should be revised to include these requirements.
3. Patient Access to Complete Treatment and Care Records - Health and Safety (H&S) Code Section 123100 provides the Legislature intent that every person possesses a concomitant right of access to complete information respecting his or her condition and care provided. The statute also establishes procedures for providing access to health care records or summaries of those records by patients and by those persons having responsibility for decisions respecting the health care of others.

H&S Code Section 123105 specifies the health care professionals that must provide patient record access to patients. Physical therapists are not included in Section 123105. The PTBC receives complaints from consumers who have been denied access to their records.

Without a statutory revision, the PTBC will continue to be unable to assist these citizens.

4. Unprofessional Conduct - B&P Code Section 2660 provides authority for the PTBC to take disciplinary action for specific violations. Unlike other health care practice acts, the statute does not specify that the violations constitute unprofessional conduct. Nor does Section 2660 include the phrase “not limited to” which would enable the PTBC to take disciplinary action for acts of unprofessional conduct such as verbal abuse and sexual harassment. Additionally, several violations specified in Section 2660 are limited to PTs only. As a result, the PTBC is unable to discipline PTAs for violations of the practice act that PTs are subject to.

Consequently, the PTBC requests the assistance of the JLSRC to gain the statutory authority to add physical therapists and physical therapist assistants to B&P Code Section 800 (a) and to H&S Code Section 123105. In addition, the PTBC is seeking assistance in modifying B&P Code Section 2620.7 to require PTs to document actual care given and sign legibly the patient record and Section 2660 to authorize the PTBC to discipline licensees for unprofessional conduct.

ISSUE #2: Should the PTBC perform its own probation monitoring?

Currently, the PTBC’s probation monitoring is performed by the Department of Consumer Affairs’ Division of Investigations. Understandably probation monitoring is a much lower priority than investigation of complaints. The PTBC believes it would be more economical and, just as effective, for non-sworn staff to perform probation monitoring. Additionally, with lower costs, more probationers would be able to pay, thereby increasing the amount of cost recovery collected by the PTBC. Utilizing a non-sworn staff person whose main focus is monitoring probationers would improve the monitoring program.

The PTBC currently has 35 probationers. The PTBC envisions this number could be maintained with one-person year. The probation monitor would meet with each new probationer to discuss the terms of probation, provide necessary forms and establish conditions for review. The probation monitor would review each probationer on a quarterly basis or more if necessary. The review may be made by telephone or face-to-face visit, but the probationer would be personally interviewed at least twice a year. Each probationer would be required to submit self certified quarterly reports. The probation monitor would utilize the quarterly reports to ensure compliance and validity of the probationer’s statements.

An essential element to ensure the ongoing viability of a probation-monitoring program is for the PTBC to have statutory authority to require payment of probation monitoring costs. Currently, the PTBC may only seek recovery of probation monitoring cost in cases that are settled through a stipulated agreement.

Consequently, the PTBC is seeking the JLSRC's support in gaining a legislative mandated probation-monitoring program and the authority to require payment of probation monitoring costs.

ISSUE #3: Should the PTBC require licensees to disclose misdemeanors and criminal activity on their license renewal forms?

During the last sunset review the JLSRC concurred the PBTC should require licensees to disclose misdemeanors and criminal activity on their license renewal forms because this authority has already been granted to other health care boards for the purpose of enforcement enhancement, Old Issue #7.

The PTBC is seeking the JLSRC's assistance in obtaining legislative authority to commence this requirement.

ISSUE #4: Should the PTBC be provided the authority to issue probationary licenses?

The PTBC, on occasion, has applicants whose background investigations indicate restricted licenses should be issued to ensure the public's safety will not be jeopardized by recently rehabilitated licensees. Currently, the PTBC must deny licensure and the applicant must appeal the denial. This process normally takes at least six months, during which time the applicant is prevented from working in the profession. The PTBC believes a more logical approach would be providing the statutory authority for the PTBC to issue a license with terms and conditions (probationary license) and establishing a process by which the licensee could appeal the restrictions. This would protect the public, allow the applicant to practice within the limitations imposed, and still provide the licensee with due process. If the licensee prevails at an administrative hearing, an unrestricted license would then be issued.

The PTBC is requesting the JLSRC assist the PTBC is gaining legislative authority to issue an initial probationary license.

ISSUE #5: Should the PTBC implement, as a pilot program, a system whereby Attorney General and Office of Administrative Hearings costs are rolled forward?

During its last sunset review the PTBC recommended the funding of expenditures for AG and OAH costs utilizing the roll forward method be explored. The preliminary recommendations regarding the PTBC included a recommendation that the DCA confer with the AG and OAH and report on the feasibility of implementing the roll forward system of funding. This recommendation was not included in the final JLSRC recommendations.

The roll forward funding sets specific budgeted cost amounts based on historical and anticipated workload, and provides for an adjustment to actual cost two years in the future. The DOI has

been funded for several years utilizing this method permitting DOI to continue investigations even when the annual budget may have been exhausted. An adjustment to actual cost is then made in year three of the cycle. The PTBC would then be able, if the PTBC had the authority to use the roll forward method, to adjust fees if enforcement costs vary significantly from traditional levels.

The PTBC continues its belief that the roll forward system would be appropriate for funding all three entities that provide support to its enforcement program.

The PTBC is seeking the JLSRC's support to provide in statute a requirement for a pilot program utilizing this system. Such a program would demonstrate to other boards, AG and OAH that this method would assist everyone in accomplishing its mission of public protection. The PTBC is willing to be the subject of the pilot program.

The PTBC recommends the JLSRC explore a roll forward funding system as a pilot program.

ISSUE #6: Should the PTBC require continuing education of Physical Therapists and Physical Therapist Assistants as a condition of license renewal?

Currently, unlike other health care professions, the physical therapy practice act does not require continuing education for the renewal of a license.

The Federation of State Physical Therapy Boards is conducting a study on continued competency of physical therapists on a national level. Continuing education is a component of the continued competency study being conducted by the Federation. It is anticipated that once the Federation releases its report in 2002, the Board will review the study to determine if legislation to mandate continued competency for physical therapists and assistants should be pursued. However, while awaiting the results of the study, and to be consistent with other health care boards, the PTBC has voted to pursue continuing education requirements for its licensees.

The PTBC envisions adopting standards that would enhance physical therapist and physical therapist assistant knowledge as related to the field of physical therapy, keeping licensees updated and abreast of new technology and advances in the field. The PTBC envisions course work such as skill development in the sub-specialty areas of physical therapy, and courses in patient safety. It has been proposed the PTBC would require physical therapists to complete fifty (50) continuing education hours per renewal and physical therapist assistants twenty-five (25) per renewal. These CE hours are fairly consistent with other health care practitioners.

The PTBC is seeking the JLSRC's assistance in obtaining legislative authority to adopt and administer standards for continuing education for physical therapists and physical therapist assistants. In addition, the PTBC needs legislative authority to adopt and set standards for providers of physical therapy continuing education and establish statutory authority for fees and appropriate program staff.

ISSUE #7: Should the PTBC eliminate licensure of Physical Therapist Assistants based on equivalent education and experience?

California is the only State in the nation that still provides this avenue for licensure. The Board has utilized its regulatory authority to revise the definition of equivalency. However, even with more comprehensive requirements, the passage rate for equivalency applicants on the licensure examination still remains approximately one third ($\frac{1}{3}$) of the national passage rate. The passage rate for graduates of approved educational program is approximately two thirds ($\frac{2}{3}$) of the nation passage rate.

While the PTBC is reluctant to recommend closing this avenue of approval for physical therapist assistants, given the unrealistic expectation of applicants passing the examination, this avenue may be more of a detriment than a benefit to applicants. Further, the PTBC believes the concern for public safety, along with the availability of approved educational programs throughout the state, merits the consideration of the issue by the Legislature.

ISSUE #8: *Should the PTBC institute picture licenses?*

Currently, licenses are printed on security paper that supposedly cannot be reproduced without a void mark appearing on the license. However, licenses can still be altered. Additionally, when carried in a licensee's wallet, the print often wears off, removing valid data. To eliminate some of the problems inherent with paper licenses, and reduce the creation of fraudulent licenses, the PTBC would like to institute the issuance of licenses with pictures from the Department of Motor Vehicles' (DMV) database.

The PTBC is requesting the JLSRC's assistance in gaining statutory authority to access DMV's photographs and the resources to implement the program.

ISSUE #9: *Should the PTBC be legislatively mandated to provide publications to increase the awareness of the public and licensees to current laws and regulations defining the practice of physical therapy and current issues that effect the public's safety?*

The PTBC has had difficulty obtaining the resources to produce newsletters and publish a resource book containing the current laws and regulations. The PTBC has tried to accomplish the outreach goals contained in its strategic plan by utilizing the Internet, but has found there are a significant number of licensees who either do not have access, or who prefer the information in printed form. The Internet is also ineffective in educating licensees about changes in regulations with which they must comply.

The Board is requesting the JLSRC's assistance in providing statutory requirements and resources for the publication of three newsletters per year and the biennial production of a resource book containing the laws and regulations.

ISSUE #10: *Should the PTBC make its Law Examination available through the Internet?*

The PTBC, with the assistance of DCA is in the process of developing an Internet application to offer the California Law Examination (CLE) on the Internet. The examination tests the applicant's knowledge of the laws and regulations regulating the practice of physical therapy in California. The Office of Examination Resources (OER) of DCA expressed concern the Board would not be in control of the administration environment of an examination that could be the basis for the denial of a license.

OER indicated that since the CLE is testing for knowledge of laws, not for specific skills needed for practice, the objection is not necessarily specific to this test, but it could possibly set a precedent. If the requirement for the test was changed so that a potential applicant had to pass the examination in order to be qualified to make application for licensure, the concern would be greatly reduced.

Therefore, the PTBC is requesting the JLSRC's assistance in revising the statutory requirements for the examination, specifically making the passing of the CLE a requirement that must be met prior to making application for licensure.

3.

BACKGROUND PAPER FOR HEARING

IDENTIFIED ISSUES, QUESTIONS FOR THE COUNCIL, AND BACKGROUND CONCERNING ISSUES

PRIOR SUNSET REVIEW: The Physical Therapy Board of California (Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) four years ago (1997-98). The JLSRC and the Department of Consumer Affairs (DCA) identified 10 issues and made recommendations regarding them.

The JLSRC voted to: (1) continue the licensing of physical therapists (PTs), (2) continue licensing of physical therapist assistants (PTAs), (3) have the Board evaluate the feasibility of returning the certification of electromyography to the professional association, (4) require any proposal for supervision of physical therapy assistants to go through a legislative “sunrise” process prior to approval, and (5) require PTs to display their licenses or registrations in the locality they are treating patients and to notify patients who they can contact with questions or complaints regarding the licensee. The JLSRC did not adopt the recommendation of the DCA and the JLSRC staff to (6) research an appropriate approach to privatizing the Board’s diversion program by a vote of 3 to 3. The JLSRC also voted to: (7) require licensees to report criminal convictions to the Board, (8) recommend that the Board move toward implementing an electronic tracking system to obtain timely, accurate and complete licensing application data, and (9) continue the Board as the agency to administer the Physical Therapy Practice Act (Act). Finally, the JLSRC did not adopt the DCA and JLSRC staff recommendation to (10) add a public member to the Board to increase its size and change its composition from 6 members (3 licensees & 3 public members) to 7 members (4 public members and 3 licensees.) Instead the JLSRC adopted a substitute recommendation to increase the Board to 7 members by adding one licensed PT involved in the education of PTs (resulting in a Board composition of 4 licensees to 3 public members.)

On October 1, 1999, the Board submitted a report to the Legislature on the necessity of certifying PTs to perform electromyography. Based on that information the Legislature (SB 1600, Chapter 427-Statutes of 2000) removed the sunset on the provision that authorized the Board to do this certification, thereby continuing the Board’s certification of PT electroneuromyographers (EMGs) and PT kinesiological electromyographers (KEMGs.) While legislation was enacted to require PTs to wear name tags identifying themselves as PTs, the JLSRC recommendation to provide notification to patients as to where to file complaints against PTs has not been enacted.

And the JLSRC recommendation to require PTs to disclose criminal convictions to the Board has not been enacted (though the Board is seeking support for enactment of that requirement – see new Issue # 7 below).

GENERAL BACKGROUND AND DESCRIPTION OF THE BOARD:

The Board was established in 1953 and is currently composed of 7 members - 4 licensees (including educator) and 3 public members. The Board licenses approximately 16,819 physical therapists (including 25 EMGs & 30 KEMGs) and 4, 477 physical therapist assistants. The Board does not license Physical Therapy Aides, but does regulate what duties and functions may be performed under the supervision of a licensed PT. The Board has an annual budget of approximately \$2 million and a fund reserve (as of 7/1/01) of \$1,675,000.

The Board's revenues and expenditures have been stable over the past four years. The Board's annual revenues are approximately \$2.1 million with 51% coming from license renewal fees, 43% from licensing and examination fees, and 6% from interest and other miscellaneous revenue. The Board's annual expenditures are approximately \$2 million with 49% expended on investigating consumer complaints and taking disciplinary action against licensees, 36% spent on examinations, 14% spent on processing initial and renewal licenses, and just over 1% (\$22,584) expended on the Board's Diversion Program.

To be licensed as a PT, an applicant must be at least 18 years old, not have committed any acts or crimes constituting grounds for denial under general licensing provisions of the Business and Professions Code (BPC), have successfully completed specified education approved by the Commission on Accreditation of Physical Therapy Education (CAPTE) including 18 weeks of full-time clinical experience (resulting in a Bachelors, Masters, or Doctorate degrees), and passed both the National Physical Therapy Examination (NPTE) administered by the Federation of State Boards of Physical Therapy (FSBPT) and the California Law exam. Starting in 2002, the CAPTE will accredit only those educational programs that grant a post-baccalaureate degree (Masters or Doctorate).

Graduates of an educational program that is not approved by the CAPTE must have their education determined to be equivalent to that of an approved PT educational program, and must also complete a period of clinical service not to exceed 9 months under the direction and supervision of a California licensed PT. The Board reports that the occupational analysis of the profession is performed by the FSBPT, and that an update of the occupational analysis that was last done in 1996 is currently in progress. To be additionally certified as either an EMG or a KEMG, a PT must complete regular or extension course work pertinent to electromyography from an accredited or approved public university, state college or private postsecondary institution, and pass a California certification exam.

To be licensed as a PTA, an applicant must obtain an Associate degree in a physical therapist assistant program with both didactic and clinical work in and related to physical therapy, and must pass the Physical Therapist Assistant Licensure Applicant (PTALA) exam. Currently, there are no mandatory continuing education (CE) requirements for renewal of either a PT or PTA license.

Reciprocity and temporary licensure. California recognizes the approval of physical therapy educational programs by the CAPTE of the American Physical Therapy Association (APTA.) CAPTE has approved programs in Canada, Ireland, Netherlands, Scotland and the United States. Graduates of CAPTE-approved PT educational programs may perform physical therapy while awaiting the results of their first attempt to pass the national licensing exam (the NPTE.) These individuals are considered Physical Therapy License Applicants (PTLAs) and must practice under the supervision of a California licensed PT once they obtain authorization from the Board. This provision applies only to individuals seeking their first license.

Graduates of CAPTE approved PTA programs in the U.S. may perform physical therapy procedures under the supervision of a California licensed PT while awaiting the results of their first attempt to pass the PTALA exam. Graduates of CAPTE approved educational programs who have been licensed a PTs or PTAs in other states may also work as license applicants under the supervision of a California licensed PT while they await Board approval of their license. Graduates of non-CAPTE approved programs outside the U.S. must first pass the national exam (NPTE) and complete a period of clinical practice not to exceed 9 months under the supervision of a California licensed prior to becoming eligible for licensure, unless they have been licensed in another state and practicing for at least 9 months. The Board states that it is also working with the Federation of State Boards of Physical Therapy on the development of new application procedures that could expedite the examination process and ultimately eliminate the need for temporary licensure.

The Board is currently conducting a validation study to determine if the educational curriculum requirements for foreign educated physical therapists are being met by California educational programs that are approved by the Board.

BUDGETARY ISSUES

ISSUE #1: The Physical Therapy Board's Fund Reserve is projected to remain at about 9.7 months reserve.

Questions for the Board: *What regulatory action was the Board proposing to take regarding its fund reserve? What are the negotiations for changes in processing of examination fees the Board mentions in its report (page 9) as one reason it has postponed taking regulatory action? What is the status of the new Department of Consumer Affairs application, licensure and enforcement database system the Board mentions as another reason for postponing regulatory action? When does the Board expect this new system to be implemented? Is the Board currently expending any of its budget on this proposed new system, and if so, how much annually?*

Background: The Board reports that it had a fund reserve of \$1,675,000, or 9.7 months as of June 30, 2001, and its projections through 2004/05 show that the reserve will also be 9.7 months (\$1,844,146) given its stable revenue and expenditure patterns. The general requirement is for licensing boards to maintain a maximum of 6 months reserves. The Board states it has postponed regulatory action until negotiations for changes in processing of examination fees are

concluded and development and implementation costs have been determined for the new DCA application, licensure and enforcement data base system. In the new issues the Board has raised in its “Sunset Report” (see below), it has proposed various program changes that would appear to require additional expenditures that could affect its fund reserve if implemented.

ISSUE # 2: The Physical Therapy Board has approximately 16,819 licensed physical therapists and 4,477 licensed physical therapist assistants, yet contracts to provide an alcohol and drug diversion program for its licensees that it reports has 5 participants and costs the Board \$22,584.

Questions for the Board: *What does the Board pay for in administering the diversion program? Do the licensees have to pay the diversion program contractor for the costs of participating in the program? When did the Board first commence its diversion program? How many participants has it had since its inception? How many of these participants have successfully completed the program since its inception? Did the Board take disciplinary action against any of these participants, and if so, against how many, what actions were taken, and were these actions taken prior to, during or subsequent to the licensees participation in the diversion program?*

Background: The Board is statutorily authorized to administer a diversion program for licensees that are drug or alcohol impaired. The Board reports that it does not provide rehabilitative services but only provides assistance in obtaining such services and in monitoring licensees in such programs to ensure that they do not present a threat to the public. The Board contracts with a private provider, Managed Health Net Services (formerly known as Occupational Health Services) to provide confidential intervention, assessment, referral, and monitoring services for rehabilitation of PTs and PTAs who are impaired due to dependency on alcohol or other chemical substances. As noted previously in this background paper, at its last sunset review of the Board the JLSRC voted 3-3 against the recommendation that the Board, along with the Medical Board and other boards that administer a diversion program, evaluate and report to the JLSRC on a plan to privatize their diversion programs.

LICENSURE ISSUES

ISSUE #3: The Physical Therapy Board does not participate in the Department of Consumer Affairs’ “Applicant Tracking System” and has to randomly sample, by hand, its applications to determine application processing time. That processing time has averaged 149 days (app. 5 months) in the past four years for applicants who pass the licensing examination on the first attempt, and 114 days (3 ½ + months) for all applications.

Questions for the Board: *Why doesn't the Board participate in the department's applicant tracking system? Does the Board know what the average time is to obtain a license once an applicant has completed all of the requirements (education graduation & passage of the licensing exams)? Is there anything the Board can do to speed up this process?*

Background: The Board reports that it does not have the advantage of using the DCA Applicant Tracking System to track application process time, and had to randomly sample approximately 2 ½% of its applications from each of the past four years to provide the JLSRC with an approximation of its average application processing times. Since the DCA operates such a system, the Board has a fund reserve and pays for DCA's administrative services on a pro-rata basis, as do other licensing boards within the DCA, it is unclear why the Board is not participating in the applicant tracking system operated by the DCA.

EXAMINATION ISSUES

(See **Issue #14** under "New Issues Raised by the Board" – below)

CONTINUING COMPETENCE ISSUES

(See **Issue # 10** under "New Issues Raised by the Board" – below)

ENFORCEMENT ISSUES

ISSUE #4: The Board reports that its enforcement activities (investigations, accusations, and disciplinary decisions) have increased in the past four years. However, the average time reported by the Board to process its disciplinary cases has also been increasing – particularly for investigation and "pre-accusation" time frames.

Questions for the Board: *To what does the Board attribute its increased disciplinary activity? The Board reports that 49% of its complaints relate to "personal conduct" of its licensees. What is included within the term "personal conduct?" To what does the Board attribute the average increase in investigation and pre-accusation time periods? Does the "pre-accusation" time period include post-investigation cases that are still pending at the Board prior to submittal to the Attorney General's (AG's) office as well as cases pending at the AG's Office before an accusation is filed? If so, does the Board have a breakdown as to what the average times are at each stage? What causes the delays at both stages? How long are the delays in receiving*

expenditure reports from the Division of Investigation (DOI) and the AG? How do these reporting delays affect the Board's ability to conduct its disciplinary activities? What is the percentage (and number) of cases referred to the AG in which no accusation is filed? Has the Board sought deficiency expenditure authority in the past four years? Has the Board sought to further increase its budgeted expenditure authority for enforcement? Why has the number of cases in which cost recovery was ordered decreased, despite an increase in the number of potential cases for cost recovery? What does the Board believe it can do to decrease the disciplinary time periods?

Background: The Board reports that 42% of its complaints were filed by the public, insurance companies, and governmental agencies. The remaining 58% were filed by the physical therapy profession itself. Many of the latter were reported as being filed on behalf of patients who were concerned that previous physical therapy treatment they had received was inappropriate. The most common complaints were for incompetent care, unlicensed practice, aiding and abetting unlicensed activity, improper supervision of licensed PTAs and unlicensed physical therapy aides, and personal conduct. Personal conduct includes criminal convictions, discipline by other states, sexual misconduct, and substance and/or drug related complaints. Over the past four years 49% of complaints involved personal conduct.

The Board reports that while the number of its complaints have remained stable over the past four years, there has been an increase in the number of investigations referred for investigation (80% increase, investigations commenced (81 in 2000/01), cases referred for criminal prosecution (10 in 2000/01) and referred to the AG's office (31 in 2000/01), accusations filed (60% increase to 16 in 2000/01), stipulated settlements (9 in 2000/01), disciplinary actions (14 in 2000/01), and probation violations (5 in 2000/01). The Board also reports that the majority of its cases are taking two years to be investigated and adjudicated, and that delays are often within the DCA's Division of Investigation (DOI) that investigates the Board's cases and the AG's office which prosecutes those cases administratively. According to the Board, these delays can be caused by the complexity of the cases, staffing issues, or caseload and scheduling at the AG's office and the Office of Administrative Hearings (OAH).

The Board states it is seeking to amend its current administrative citation and fine regulations to specify that citations are public for only five years from their date of issuance. Since the Board is concerned that such citations currently stay on a licensee's record indefinitely, if it places a statute of limitations on disclosure of these, or other disciplinary actions it discloses on a licensee's record, it may need to consider disclosing that limitation exists to the public.

NEW ISSUES and RECOMMENDATIONS RAISED BY THE PHYSICAL THERAPY BOARD IN ITS SUNSET REPORT (Pages 35-39 of Board's report)

ISSUE #5: Should the Physical Therapy Board of California (PTBC) seek enhancement of its public protection authority? Specifically:

(1) Should physical therapists and physical therapist assistants be added to the mandated reporting of civil law suits and peer review (commonly referred to as B&PC “Section 805 reports)? (2) Should the Physical Therapy Practice Act be amended to require physical therapists to document in the patient record all treatment provided? (3) Should physical therapists be required to provide patients access to their medical records? (4) Should the Physical Therapy Act be amended to authorize the Board to discipline its licensees for “unprofessional conduct” by defining that term to include but not be limited to all current statutory causes for discipline and extending the term to include physical therapist assistants?

Questions for the Board: *What is the rationale and justification for each of these proposed changes. What would be the fiscal impact of these proposed changes? What specific statutory changes (language) are necessary to accomplish the proposed changes?*

Background: The Board states that it has identified four areas where it believes there is a need to increase its statutory authority for purposes of public protection. They are so-called “Section 805” reports including reports by insurance companies, courts, licensees, and health plans of civil settlements and actions taken by peer review bodies. The Board reports that while other health care professions are included within these provisions, the physical therapy profession is not. Another area is documentation of treatment in patient records. The Board states that while a PT is required to document his or her patient evaluation, goals, treatment plan and treatment summary in a patient’s record, he or she is not required to document any physical therapy care actually provided or to legibly sign the patient record. A third area is that current law does not specifically include PTs as one of the health care professionals who must provide patients access to their medical records or summaries thereof. And a fourth area cited by the Board is that unlike other health care practice acts, the Physical Therapy Practice Act (PT Act) does not specify that violations constitute “unprofessional conduct,” nor does it include the phrase “not limited to” when specifying acts which violate the Act which would enable the Board to take disciplinary action for unprofessional conduct such as verbal abuse and sexual harassment. The Board further points out that several violations of the PT Act are limited to licensed PTs and do not apply to licensed PTAs as well.

ISSUE #6: Should the Physical Therapy Board of California perform its own probation monitoring?

Questions for the Board: *What is the rationale and justification for having the PTBC perform its own probation monitoring rather than continuing to have this monitoring performed by the Division of Investigation of the Department of Consumer Affairs? If probation monitoring is already currently authorized why does the Board need additional authority to have its own staff perform it? Why can’t the Board offset the costs for performing its own monitoring with the resources saved by no longer having monitoring done by the DOI? What specific resources*

(money, staff, equipment, etc.) is the Board seeking for this proposal? What specific statutory changes (language) are necessary to accomplish these proposed changes?

Background: Currently, the Board's probation monitoring (of disciplined licensees practicing under probationary restrictions) is performed by the DCA's DOI, but that such cases are considered a lower priority by the DOI than its actual investigation of complaints. The Board believes it would be more economical, and just as effective, were it to employ non-peace officer (non-sworn) staff to perform its probation monitoring. Consequently, the Board is seeking JLSRC support for a legislative mandated probation monitoring program and authority to require it to pay probation monitoring costs (additional budgeted appropriation.)

ISSUE #7: Should the Physical Therapy Board of California require its licensees to disclose misdemeanors and other criminal activity on their license renewal forms?

Questions for the Board: *Since this proposal was recommended at the Board's last sunset review and adopted by the JLSRC – why hasn't it been implemented? What would be the fiscal impact of this proposed change? What specific statutory changes (language) are necessary to accomplish this proposed change?*

Background: As noted earlier in this Background, at its last sunset review of the Board in 1997/98 the JLSRC adopted the recommendation to require the Board's licensees to report criminal convictions to the Board. However, this requirement has not been enacted as yet. Such authority has been granted by the Legislature to other health care profession licensing boards to enhance their enforcement programs.

ISSUE #8: Should the Physical Therapy Board of California be authorized to issue probationary (restricted) licenses to license applicants?

Questions for the Board: *What is the rationale and justification for this proposed change? Is this proposal intended to apply only to new license applicants or would it also apply in the case of license reinstatements (e.g., following a disciplinary revocation)? What would be the fiscal impact of this proposed change? What specific statutory change (language) would be necessary to accomplish the proposed change?*

Background: The Board reports that on occasion it has applicants whose background investigations indicate restricted licenses should be issued to ensure that the public's safety will not be jeopardized by recently rehabilitated licensees. Absent this authority, the Board is limited to either issuing an unconditional license or denying a license altogether, which can result in the Board defending the latter action in an administrative hearing because of a protest by the applicant. The Board is requesting the JLSRC's assistance in obtaining statutory authority legislatively to issue initial probationary (restricted or conditional) licenses. The Board has such authority as part of its disciplinary authority regarding existing licensees who are disciplined.

Currently, at least one other licensing board in the DCA (the Respiratory Care Board) has such probationary license authority for issuing initial licenses.

ISSUE #9: Should the Physical Therapy Board of California implement, as a pilot program, a system whereby the Attorney General and the Office of Administrative Hearings costs for physical therapy license-related cases are “rolled forward” (as are the costs for investigations performed for the Board by the Division of Investigation of the Department of Consumer Affairs)?

Questions for the Board: *What is the rationale and justification for this proposed change? Has there been any change in circumstances since this proposal was rejected by the JLSRC at the Board’s prior sunset review in 1998? Has the Board explored the feasibility of this proposed change with the Department of Consumer Affairs, the Attorney General and the Office of Administrative Hearings? What would be the fiscal impact of this proposed change? What would be the Board’s enforcement budget for these changes initially and what would the Board project for these budget items in the future? If budget projections are infeasible, then what would this proposal have changed regarding the Board’s budget had it been in effect since the Board’s last sunset review? What specific statutory changes (language) would be necessary to accomplish the proposed change?*

Background: During its last sunset review by the JLSRC, the Board made the same recommendation. However, that Board recommendation was not included in the final JLSRC recommendations that were developed following the testimony received by the JLSRC during its hearings. Currently, the Board reimburses the AG and the OAH for their service from funds that it are appropriated for those purposes in its annual budget. If the services provided exceed the appropriated amounts, then the Board must seek budget a deficiency appropriation from the Joint Legislative Budget Committee to make up the difference in the same budget year. If such increased expenditures were anticipated to occur in future budget years the Board could submit a Budget Change Proposal (BCP) to have its baseline budget increased for following budget years to increase the appropriation for such services. The Board does not indicate whether it has had to submit deficiency requests or if it has submitted any BCPs related to these services.

The Board generally pays a pro-rata amount to the DCA each year for its provision of centralized administrative support services. However, payment for the investigative services of the DCA’s DOI are done through a “roll-forward” method, whereby amounts incurred by the DOI investigations that exceed the amount paid by the Board in a particular year are “rolled forward” and added to the amount that will be charged the Board in future years. The Board is recommending that the JLSRC explore a roll forward funding system for these Board expenditures on a “pilot program” basis.

ISSUE #10: Mandatory Continuing Education - Should the Physical Therapy Board of California require continuing education of physical therapists and physical therapy assistants as a condition of license renewal?

Questions for the Board: *What is the rationale and justification for proposing mandatory continuing education for its licensees? Does the Board have any research to show that licensed professionals subject to mandatory continuing education perform more competently than comparably licensed professionals who are not subject to it? How many other states require continuing education for license renewal of physical therapists? For physical therapist assistants? Does the Board have any data to show that harm is being caused to the public by its licensees as a result of them not having taken continuing education? Do the Board's disciplinary cases show that licensees are performing incompetently because of a lack of updated knowledge? Has the Board done any research regarding how many of its licensees currently participate in continuing education on a voluntary basis? If so, does the Board have any data on the average amount of voluntary continuing education taken by these licensees each year? How did the Board select 50 hours (for PTs) and 25 hours (for PTAs) as the proper amount of mandatory continuing education? What other health occupations have more, the same, or less mandatory continuing education? What is the availability of continuing physical therapy education courses (e.g., estimated number of courses, locations, number of providers)? Who are the primary providers of continuing physical therapy education? What would be the estimated costs to licensees to comply with the proposed mandatory continuing education (e.g., what are the fees or costs currently, what do comparable requirements cost other licensed health care professionals who are subject to mandatory continuing education?) Has the Board surveyed its licensees regarding their views on mandatory physical therapy education? What would be the fiscal impact (to the Board) of this proposed requirement? What specific statutory change (language) would be necessary to accomplish the proposed requirement?*

Background: Currently, there are no mandatory continuing education (CE) requirements for renewal of either a PT or a PTA license. The Board reports that the issue of continued competency currently is being studied by the Federation of State Boards of Physical Therapy (FSBPT). The Board states that it is anticipated that once that study is completed and the FSBPT releases its report in 2002 that the Board will review the study to determine if legislation to mandate continued competency for PTs and PTAs should be pursued. However, while awaiting the results of this study, and to be consistent with other California health profession licensing boards, the Board has voted to pursue mandatory continuing education requirements for its licensees. The Board has proposed requiring 50 CE hours per 2-year license renewal period for PTs and 25 CE hours per 2-year license renewal period for PTAs. The Board states that its CE hour recommendations are consistent with other health care practitioners. The Board argues that it would adopt CE standards that would enhance PT and PTA knowledge related to physical therapy, keeping licensees abreast of new technology and advances in the field of physical therapy. The Board does not indicate whether its decision has been communicated to all of its licensees who would be affected by these requirements.

According to information provided by the FSBPT, 26 states currently require some CE for PT license renewal, while 22 states require CE for renewal of PTA licenses. The amount of CE per license renewal period required varies from a high of 4 CE units (a unit = 10 hours) in four states

for PTs to 1 CE unit (10 hours) in two states – with the remainder somewhere in between. The amount of CE per license renewal period required for PTAs ranges from a high of 3 CE units (30 hours) in one state to a low of .25 CE units (2 ½ hours) – with the remainder of states being somewhere in between.

While government has struggled with the issue of what steps might be required to assure that licensed professionals maintain continued competency in their profession following initial licensure – generally where any action has been taken it has been to mandate CE. While on its face CE would seem to assure that practitioners are exposed to ongoing education related to their profession, the value of mandating CE has been questioned in the past. Questions regarding the financial benefit to be derived by providers of mandatory CE to a “captive” licensing population, the relevance of the courses, assurance of actual attendance, and whether a practitioner will actually participate and learn if compelled (rather than by voluntarily doing so by choice) are some of those that have been raised regarding the efficacy of mandating CE. Generally, as opposed to requiring that licensees retake a licensing exam, mandatory CE is believed to be the more feasible option.

ISSUE #11: Should the Physical Therapy Board of California eliminate the licensure of physical therapist assistants based on equivalent education and experience (i.e. only allow licensure for applicants who have graduated from an approved educational (AA) program.)

Questions for the Board: *Is the Board formally recommending elimination of this avenue of approval for physical therapist assistants? How many (and what percentage) of current licensees qualified for licensure in this manner? What proportion (number and percentage) of current licensees qualify for licensure in this manner? What data does the Board have to show that persons licensed in this manner do not meet the minimum requirements to practice competently? Is there any disciplinary data to reflect a higher degree of incompetence on the part of licensees who were licensed in this manner? What would be the fiscal impact of this proposal? What specific statutory changes (language) would be necessary to accomplish this change?*

Background: The Board states that California is the only state in the nation (of those that require licensure of PTs and PTAs) that still provides for licensure of PTAs who do not graduate from an approved two-year (AA degree) PTA program by establishing that they have equivalent education and experience. The Board states that it has used its regulatory authority in the past to revise the definition of “equivalency” to include more comprehensive requirements, but that the passage rate for equivalency applicants on the PTA licensure exam still remains approximately one third of the national passage rate. The passage rate for graduates of approved educational programs is approximately two-thirds of the national passage rate. The Board states that while it is reluctant to recommend closing this avenue of license approval for PTAs, given the unrealistic expectation of applicants passing the exam, this avenue may be more of a detriment than a benefit to applicants. The Board does not indicate whether the national exam passage rates are known to applicants prior to taking the exam. The Board also believes that the concern for

public safety, along with the availability of approved educational programs throughout the state, merits the consideration of this issue by the Legislature.

ISSUE #12: Should the Physical Therapy Board of California institute picture licenses?

Questions for the Board: *What other occupational licensing boards in the Department of Consumer Affairs issue picture licenses? Are other types of more permanent licenses used by any of these other boards? Why does the Board believe a picture license is necessary? Has the Board reviewed other alternative types of more permanent licenses without pictures (e.g., plastic, laminated, etc.) that may be available and their comparative costs? What would be the fiscal impact of this change? How much would the proposed picture license cost in comparison to what the current license costs? How often would the picture on the license be updated? Would the Board need a fee increase to implement this change? Has the Board conferred with the Department of Motor Vehicles on the Board's proposal to access the DMV photographs for its own licensees? What specific statutory changes (language) would be necessary to accomplish the proposed change?*

Background: Currently the Board issues its licenses on security paper that supposedly cannot be reproduced without a void mark appearing on the license (copy). However, the Board states that licenses still can be altered, and that licenses can become unreadable from wear during the two-year licensing period. The Board is requesting the assistance of the JLSRC in gaining statutory authority to access the Department of Motor Vehicles' (DMVs') photographs from its licensing database, and also the resources (\$/personnel?) to implement a program whereby the Board would issue picture licenses (which apparently are less susceptible to fraudulent reproduction or use, and wear and tear). The Board does not indicate if other options have been investigated, or whether the proposed option has been used by other licensing boards in the DCA or if it has been discussed with the DMV for its evaluation.

ISSUE #13: Should the Physical Therapy Board of California be legislatively mandated to provide publications to increase the awareness of the public and licensees to current laws and regulations defining the practice of physical therapy and current issues that effect [sic] the public's safety?

Questions for the Board: *What publications does the Board currently provide, how many and what are the costs? How often does the Board produce its newsletter and what is its circulation? For how long has the Board produced the pamphlets and its newsletters? What would be the fiscal impact of this proposal? What specific statutory changes (language) would be necessary to accomplish the proposed changes?*

Background: While the Board has published a newsletter and its resource book containing it's the statutes and regulations relevant to the practice of physical therapy, it argues that it has had difficulty obtaining the resources (\$/personnel?) that is necessary for it to do these publications.

The Board is requesting the assistance of the JLSRC in providing a statutory requirement and the related resources (\$/personnel?) for the publication of three newsletters per year and the biennial production of a resource book containing laws and regulations. The Board does not indicate the percentage of these publications go to licensees vs. the general public in the past or as proposed in the future, or whether there is a charge by the Board for the resource book.

ISSUE #14: Should the Physical Therapy Board of California make its Law Examination available through the Internet?

Questions for the Board: *How soon does the Board expect to be able to offer its law exam on the Internet? Is doing so the same as making the exam available through “computer testing?” Since the Board is proposing to require a person to take and pass this exam before rather than after applying for licensure, how will the Board make this exam available? I.e., will a person have to apply to the Board to take the exam and thereafter separately apply to become licensed? What would be the fiscal impact of this proposal? Do the current \$380 (PT) and \$365 (PT Asst.) exam fees include the administration of the Law Exam? Would there be two separate examination fees under the Board’s proposal? What fee(s) would the Board propose to charge in the future? What specific statutory change (language) would be required to accomplish this proposed change in the law?*

Background: As part of its requirements for issuing a PT or PTA license, the Board administers its own examination on California’s laws and regulations (the CLE) relating to the practice of physical therapy. In exploring the possibility of providing this exam via the Internet, the DCA’s Office of Examination Resources (OER) expressed concern that the Board would not be in control of the administration environment of an examination on the Internet the results of which could be the basis for denial of a license. The Board is requesting the assistance of the JLSRC in revising its statutory requirements for the examination, specifically by making the passing of the CLE a prerequisite for making an application for licensure (rather than as just a prerequisite for licensure that a person who has already applied must pass prior to obtaining a license). Thus the results on the exam would determine whether a person could apply to obtain a license, rather than determine whether an applicant could be granted a license.

4.

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

ISSUE #1. (CONTINUE TO REGULATE THE PROFESSION AND THE BOARD?)
Should the licensing and regulation of physical therapist be continued by the Physical Therapy Board?

Recommendation #1: *The Joint Committee and the Department recommend the continuance of the regulation of physical therapists by the Physical Therapy Board (Board) to ensure health and safety of the public.*

Comments: The Department and the Joint Committee recommend the continued regulation of physical therapists. As independent health care practitioners, physical therapists perform evaluations, develop and implement treatment plans, and work closely and independently with patients. The health and safety of the public is protected with the regulation of this profession by a board.

ISSUE #2. (ENHANCE THE BOARD'S PUBLIC PROTECTION AUTHORITY?)
Should the Board's public protection authority be enhanced?

Recommendation #2: *The Joint Committee and the Department recommend the Board's public protection authority be enhanced by the clarification and/or inclusion of physical therapists in specified statutes.*

Comments: The Board has identified areas where its statutory authority, for purposes of public protection, should be increased:

- Inclusion of PTs in Business and Professions Code Section 800 reporting requirements, requiring that civil settlements and actions taken by peer review bodies be reported to the appropriate licensing boards. Physical therapists, like other health care practitioners, should be subject to these requirements. The Department supports the inclusion of physician assistants in this reporting requirement.
- Require that PTs document patient evaluation, goals, treatment plan and treatment summary in the patient's record. PTs should also be required to document the care provided and to legibly sign the patient record. It was clearly an oversight that physical

therapists are not subject to this requirement and the statute should be revised accordingly.

- Physical therapists should be included in Health and Safety Code Section 123105 which specifies that health care professionals must provide patient record access to patients.

ISSUE #3. (REQUIRE CONTINUING EDUCATION?) Should the Physical Therapy Board require continuing education of physical therapists and physical therapy assistants as a condition of license renewal?

Recommendation #3: *The Joint Committee and the Department recommend that the Board should demonstrate a need for continuing education prior to the Board adopting such a requirement.*

Comments: The Department and the JLSRC do not support the Board's proposal to require continuing education as a condition for licensure renewal at this time. Prior to adopting such a requirement, the Board should demonstrate a deficiency within the profession or changes in the profession that can be addressed through specified continuing education. To date, the Board has not provided evidence of such a deficiency.

ISSUE #4. (PHYSICAL THERAPIST ASSISTANTS?) Should the Board eliminate the licensure of physical therapist assistants based on equivalent education and experience?

Recommendation #4: *The Joint Committee and the Department recommend that the Board continue to provide licensure for physical therapist assistants (PTAs) who do not graduate from an approved two-year PTA program by establishing that they have equivalent education and experience.*

Comments: This option provides an important pathway into the profession for many nontraditional licensees including International Medical Graduates (IMGs) and those who find pursuit of a two-year program cost prohibitive. The Board should continue to offer this option to PTAs.

ISSUE #5. (IS "ROLL FORWARD" FUNDING MECHANISM PREMATURE?) Should the Board implement, as a pilot program, a system whereby the Attorney General and the Office of Administrative Hearings costs for physical therapy license-related cases are "rolled forward" (as are the costs for investigations performed for the Board by the Division of Investigation of the Department of Consumer Affairs?)

Recommendation #5: *The Joint Committee and the Department recommend that the Board not proceed with the roll forward funding mechanism pilot project at this time.*

Comments: Although the Board is to be commended for thinking creatively, the Department does not support the establishment of a “roll forward” funding mechanism pilot project for payment of fees to the Attorney General and the Office of Administrative Law, similar to the practice of keeping legal counsel on retainer as is done in the private sector. The establishment of such a pilot would represent a significant departure from the existing practice of the Department’s regulatory programs. Additionally, there does not appear to be a compelling need for such a pilot program. It is unclear to the Department what problem exists that the Board believes such a pilot program would address. Should the Board feel strongly about pursuing such a pilot program, input should be solicited from the Department, the Attorney General’s Office, and the Office of Administrative Hearings to develop a pilot project that is more clearly delineated, prior to returning to the Legislature to seek statutory authority.

ISSUE #6. (PHOTO LICENSES?) Should the Board research and pursue the use of photo licenses?

Recommendation #6: *The Joint Committee and the Department recommend that the Board should consider adopting the use of photo licenses, which will reduce license fraud and serve as a more permanent form of identification.*

Comments: The Department and the JLSRC support the Board’s desire to move forward with “permanent” licenses. The proliferation of identity theft has prompted the Department to support photo licenses as a means of more “permanent” licensure. However, the Board should do more research on the best option to provide licensees with more “permanent” licenses. The Board should consult with the Department of Motor Vehicles (DMV), the Employment Development Department (EDD), and the Department to develop a more specific proposal and determine the cost of implementation.

ISSUE #7. (LAW EXAMINATION?) Should the law examination be available through the Internet and should the Board require the passage of the law examination as a requirement to apply for licensure?

Recommendation #7: *The Joint Committee and the Department recommend that the California Law Examination should not be available through the Internet and should not be required of applicants as a requirement to apply for licensure.*

Comments: The Department and the JLSRC do not support the Board’s proposal to administer the California Law Examination via the Internet. Placing the examination on the Internet would impair exam security and reduce Board control of the testing environment of an examination, the results of which may ultimately be used as grounds to deny a license. Further, the Department and the JLSRC do not support requiring passage of the CLE as a requirement to apply for

licensure. This proposed practice is inconsistent with any of the Department's other regulatory programs and no justification for making it a prerequisite has been demonstrated.

ISSUE #8. (PROBATIONARY CERTIFICATE?) Should the Board be given the authority to provide a probationary certificate?

Recommendation #8: *The Joint Committee and the Department recommend that the Board be given authority to provide a probationary certificate.*

Comments: The Medical Board of California has the authority to grant a probationary certificate to allow an individual to practice with certain restrictions, if he or she has had convictions prior to licensure. The certificate serves as an initial license. If the licensee successfully completes the terms of the probationary license, they receive a clear and unrestricted license. If they do not, the license is revoked.

The Board has requested this authority in order to offer a more efficient and cost-effective approach to licensure, when there is evidence of prior criminal convictions. The Board has reported to the Department that it would use this authority in less than five cases annually. To assure meaningful oversight of these licensees, the Board should develop a data collection and tracking system to evaluate the success of the probationary certificate mechanism. The Board should work with the Department to develop this tracking system and should provide the Department with regular progress reports on the use of this authority. With the establishment of this mechanism, the Department recommends the Board be given authority to provide probationary certificates. The Department made a similar recommendation this year for the Physician Assistant Committee.

ISSUE #9. (REVIEW BARRIERS TO RESIDENCY AND LICENSURE FOR INTERNATIONAL MEDICAL GRADUATES (IMGs)?) Should the Board designate a staff liaison to work to work with IMGs and the programs that assist them?

Recommendation #9: *The Joint Committee and the Department recommend that the Board should designate a staff liaison to work with International Medical Graduates (IMGs) and programs that assist them.*

Comments: The Task Force on Culturally and Linguistically Competent Physicians and Dentists, co-chaired by the DCA Director, has been examining issues pertaining to the need to increase access to health care for low-income consumers living in medically underserved areas.

The Task Force has held five public hearings in communities throughout the State to assess consumers need for providers who are culturally and linguistically competent.² In each of these communities, the Task Force has heard from International Medical Graduates (IMGs) who wish to practice in the U.S. health care delivery system in some capacity, but may need additional

² San Diego, Salinas, Oxnard, San Francisco, Sacramento and Bell Gardens, California.

education and training for licensure. In an effort to assist these IMGs in their effort to re-enter either their chosen profession or an alternative health related profession, programs have been established that assess their skills, identify possible professions and educate them about licensing and education requirements. It is possible that many of these IMGs may be qualified for careers as physical therapists or physical therapy assistants, but are unaware of the licensing requirements and professional options that exist.

The Task Force intends to look more closely at the barriers to residency and licensure encountered by IMGs. In the meantime, the Department recommends the Board designate a staff liaison to work with IMGs and the programs devoted to facilitating their licensure and re-entry into their profession.

ISSUE #10. (REVIEW DIVERSION PROGRAM?) Should the Board review its diversion program and consider the revision or elimination of the program?

Recommendation #10: *The Joint Committee recommends that the Board should consider: a) revising its diversion program to provide for licensee participants to pay for their monitoring costs; or b) eliminating the program entirely.*

Comments: The Board is statutorily authorized to administer a diversion program for licensees that are drug or alcohol impaired. The Board reports that it does not provide rehabilitative services but only provides assistance in obtaining such services and in monitoring licensees in such programs to ensure that they do not present a threat to the public. The Board contracts with a private provider, Managed Health Net Services (formerly known as Occupational Health Services) to provide confidential intervention, assessment, referral, and monitoring services for rehabilitation of PTs and PTAs who are impaired due to dependency on alcohol or other chemical substances. As noted previously in this background paper, at its last sunset review of the Board the JLSRC voted 3-3 against the recommendation that the Board, along with the Medical Board and other boards that administer a diversion program, evaluate and report to the JLSRC on a plan to privatize their diversion programs.

ISSUE #11. (PROBATION MONITORING PERFORMED BY THE BOARD?) Should the Board carry out its own probation monitoring?

Recommendation #11: *The Joint Committee recommends that the Board should perform its own probation monitoring rather than having that function performed by peace officers of the Department's DOI.*

Comments: Currently, the Board's probation monitoring (of disciplined licensees practicing under probationary restrictions) is performed by the DCA's DOI, but that such cases are considered a lower priority by the DOI than its actual investigation of complaints. The Board believes it would be more economical, and just as effective, were it to employ non-peace officer (non-sworn) staff to perform its probation monitoring. Consequently, the Board is seeking

JLSRC support for a legislative mandated probation monitoring program and authority to require it to pay probation monitoring costs (additional budgeted appropriation.)

ISSUE #12. (DISCLOSE MISDEMEANORS AND CRIMINAL ACTIVITY?) Should the Board require its licensees to disclose misdemeanors and other criminal activity on their license renewal forms?

Recommendation #12: *As recommended by the Board, the Joint Committee recommends that the Board's licensees should be required to disclose misdemeanors and other criminal activity on their license renewal.*

Comments: At its last sunset review of the Board in 1997/98 the JLSRC adopted the recommendation to require the Board's licensees to report criminal convictions to the Board. However, this requirement has not been enacted as yet. Such authority has been granted by the Legislature to other health care profession licensing boards to enhance their enforcement programs.